



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 263/18

Dated: 24th April 2020

ON APPEAL FROM REDETERMINATION

REGINA v GRANT

CROWN COURT AT BRADFORD

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

CASE NO: T20177456

LEGAL AID AGENCY CASE

DATE OF REASONS: 16th November 2018

DATE OF NOTICE OF APPEAL: 4th December 2018

APPLICANT: Mr Stephen Uttley

The appeal has been successful (in part) for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £350 (plus VAT, if payable) for costs, and the £100 paid on appeal, should accordingly be made to the Applicant.

MARK WHALAN
COSTS JUDGE

REASONS FOR DECISION

Introduction

1. Mr Stephen Uttley, Counsel ('the Appellant') appeals against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') to reduce the number of pages of prosecution evidence ('PPE') forming part of his Advocates Graduated Fees Scheme ('AGFS') claim.
2. The Appellant submitted a claim for 11,489 PPE – limited to the 10,000 page cap in the regulations. This total comprised 250 pages of statements, 545 pages of exhibits, 344 pages of Forensic Reports and 10,385 pages of electronic datum served on disc. The Respondent, on appeal, has now allowed 1758 PPE (1104 on paper and 654 pages of electronic datum). 8,242 pages remain in dispute and comprise the issue in this appeal.

Background

3. This appeal has an unfortunate history. Lodged in December 2018, the file was mislaid by the court office, until it was passed to me as a 'legacy case' in August 2019. I determined the appeal on the papers on 25th September 2019. My conclusion was to allow the appeal (in part) and direct a total PPE count of 9704. It then transpired that the Respondent's written submissions of 5th June 2019 had not been placed with the file or brought to my attention. (The document had been filed by email and sent to an account of a member of staff who had by that time left the employment of HMCTS.) Accordingly, I set aside my determination and listed the appeal for an oral hearing on 24th January 2020, which was attended by both parties. Further delay then resulted from the dislocation to services caused by the Covid-19 pandemic. These delays are regretted and I apologise to the Appellant on behalf of the MOJ.
4. This determination should be read in conjunction with paragraphs 3, 4, 5, 6, 7 and 8 of my determination dated 25th September 2019. The rest of that decision is, as noted, set aside and re- determined herewith.

The submissions

5. The Respondent's case is set out in the Written Reasons dated 16th November 2018 and in written Submissions (with a schedule) dated 5th June 2019. Mr Rimer attended the hearing on 24th January 2019 and made submissions on behalf of the Respondent. The Appellant's case is set out in Grounds of Appeal lodged on 4th December 2018, and in other notes, including the Note dated 21st June 2018, an Amended Telephone Exhibit Breakdown Note, dated 8th July 2018 and an undated 'Official Complaint' submitted to the Respondent, and in written Submissions dated 16th January 2020. Mr Uttley also attended and made submissions at the hearing on 24th January. I will, where relevant, summarise the parties' submissions in my analysis and conclusions.

My analysis and conclusions

6. This appeal turns on the correct approach to be adopted, on the facts of this particular case, to the calculation of the page count for the electronic datum component of the PPE. It is common ground that the electronic datum was served in accordance with para. 1(2) of Schedule 2 to the 2013 Regulations. It is also conceded by the Respondent that with regard to the exercise of the discretion at para. 1(5), all the material on disc should be included as relevant. The primary dispute, therefore, concerns the calculation of the page count. The Respondent submits that the count should be carried out from the PDF format, which produces a total electronic page count of 654, as set out in Mr Rimer's Schedule. The Appellant submits that the count should be carried out from the Excel and the HTML formats, producing a much higher page count. He also argues, in the alternative, that Mr Rimer's PDF count is still inaccurate, to the extent that the total should be 730, not the 654 pages conceded.
7. It is of some note that the material in the Excel/HTML formats is entirely duplicative of that reproduced in the PDF format. This is a case, in other words, where the relevant material was served in its entirety in both formats.
8. The Appellant, in summary, submits that the page count should be based on the Excel/HTML formats because these were the formats he used in his substantive case preparation. There are good, practical reasons for this, not

least because these formats are more accessible and allow for better search and schedule functions.

9. Mr Rimer, for the Respondent, concedes that Excel is more user friendly, and that accordingly it is reasonable for advocates to elect to use Excel in preference to PDF. But, insofar as the page count is concerned, this is, he argues, irrelevant. What is important for the regulations is the computation of an accurate page count, irrespective of usage, and the PDF format is recognised to provide a much more realistic and, therefore, accurate count. If this gives insufficient allowance for an applicant's preparation, then this can be claimed separately as special preparation.
10. As a matter of general principle, I find Mr Rimer's preference for the PDF format to be correct. The issue, as he argues, is an accurate page count, not the advocate's working preference, however reasonable the choice in preferring to use Excel, or the time expended in reading or preparing the material. I endorse the general conclusion that in respect of an accurate page count, PDF is generally to be preferred to Excel.
11. **The particular facts of this case, however, compel a slightly different conclusion. At the hearing I was shown the relevant electronic datum in the PDF format, and noted – indeed this was agreed by the parties – that the reproduction condensed the page size, so that several pages were often reproduced on a single page. The effect of this was twofold. First, the actual page count was depressed in the PDF format, in my view artificially. Second, the sizing made it particularly difficult for the PDF format to be utilised at all, or at least with any degree of ease, regardless of an individual's preference.**
12. It seems to me, therefore, that in this case I should prefer the approach of the Appellant to that of the Respondent, and find that it is prima facie reasonable to base the page count on the material reproduced in the Excel/HTML formats. This does not mean that every page of the Excel format should be counted in the PPE, notwithstanding that all the material is relevant. This is because I was also shown during the hearing that many of the Excel pages amounted to blank cells, so that no material was reproduced. Although a blank page is still a page,

to include such in the PPE count would not, in my conclusion, constitute a proper exercise of the discretion at paragraph 1 (5) of Schedule 2 to the 2013 Regulations. I find, doing the best I can, that the PPE count should include 5,000 pages of electronic datum.

13. The appeal is allowed to the extent that I direct that the total PPE should include 5,000 pages of electronic datum, which should be added to the agreed (and already paid) total for the paper evidence.

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