



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 11/10

Dated: 4 May 2010

ON APPEAL FROM REDETERMINATION

REGINA v BROWNE

BIRMINGHAM CROWN COURT

APPEAL PURSUANT TO PARAGRAPH 21 OF SCHEDULE 1 OF THE CRIMINAL DEFENCE SERVICE (FUNDING) ORDER 2001 / ARTICLE 30 OF THE CRIMINAL DEFENCE SERVICE (FUNDING) ORDER 2007

CASE NO: T 2008 8109

CENTRAL TAXING TEAM CASE No

DATE OF REASONS: 15 December 2009

DATE OF NOTICE OF APPEAL: 23 December 2009

APPLICANT: SOLICITORS: Glaisyers Solicitors
DX 24933
Birmingham 4

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 £100 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**C. CAMPBELL
COSTS JUDGE
REASONS FOR DECISION**

1. This is an appeal by Glaisyers Solicitors against the decision of the Legal Services Commissions (Midlands Region – Nottingham Office) to reject the Appellant's claim for enhanced rates for special preparation. In its claim under the Litigator Fee Scheme, the Appellant sought two minutes per page for special preparation at an hourly expense rate of £90 in accordance with Section 24 Criminal Defence Service (Funding) (Amendment) Order 2007, being prescribed rates at £45 an hour, plus an uplift of 100%. By letter dated 15 December 2009, the LSC, after considering representations in a letter written by the Appellant dated 18 November 2009, adjusted payment from one minute to two minutes per page as being a reasonable allowance, but not at an enhanced rate. The Commissions' reasons said this:-

“Paragraph 22 of the Criminal Defence Service (Funding) (Amendment) Order 2007 confirms that, subject to paragraphs 23 and 24, proceedings outlined in paragraph 21 (Confiscation Proceedings) must be paid at the prescribed rates. Paragraph 21(5) confirms that the appropriate officer must allow fees in accordance with paragraphs 22-24 when considering grades of fee earner.

As paragraphs 23 and 24 refer to attendance at Court and routine items, neither of which is not remunerable under paragraph 15(3), it is apparent these paragraphs refer to proceedings outlined in paragraph 21”.

2. For that reason, the LSC allowed £4,222.80 against the Appellant's claim for £80,444.60 for preparation, leaving £4,222.80 in dispute.
3. The appeal was conducted by telephone when Mr Keith Astbury represented his firm. In his submissions, Mr Astbury emphasised that although the LSC had conceded that two minutes per page was reasonable by way of special preparation, the Commission had not conceded this was also a case where fees at more than prescribed rates could be considered. He contended that there was nothing in the Litigator Fee Scheme regime that prevented the payment of rates higher than those prescribed where the conditions for payment of enhanced rates under paragraph 24 of the regulations (as amended under the 2007 Order) were satisfied. In the present case, Mr Astbury relied upon the prosecution case summary, the draft defence case statement, advice from leading Counsel, and advice from J P French Associates and Police Protocols to Access to Covert Recordings drafted 8 August 2009, as supporting his contention that fees higher than prescribed rates ought properly to have been allowed by the LSC in respect of the items allowed in respect of special preparation. Had that been done, an uplift of 100% would have been added to the prescribed rate of £45 per hour, giving a total allowance of £90 per hour.
4. The starting point in reaching my decision is the Funding Order (SI 2007 No 1174). Part 1 of Schedule 2 deals with the Litigators' Graduated Fee Scheme. Paragraph 15 of Part 3 says this:-

“Fees for Special Preparation

(3) The amount of the special preparation fee must be calculated from the number of hours which the appropriate officer considers reasonable to view the prosecution evidence, and using the rates specified in the table following paragraph 22”.

5. The table following paragraph 22 of Part 4 provides as follows:-

“Table 1

Class of Work	Grade of Fee Earner	Rate	Variations
Preparation	Solicitor, legal executive or fee earner of equivalent experience.	45 per hour	Nothing”

6. Paragraph 23 referred to in the letter dated 15 December 2009 is, to my mind, irrelevant to the issue I have to decide, since this addresses allowing fees at less than the prescribed rates. Paragraph 24 then says this:-

“Allowing fees at more than the prescribed rates

– (1) Upon a determination the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate specified in paragraph 2 for preparation, attendance at Court where more than one representative is instructed, routine letters written and routine telephone calls, in respect of offences in Class A, B, C, D, G, I, J or K in the Table of Offences.

(2) The appropriate officer may allow fees at more than the prescribed rate, where it appears to him, taking into account all the relevant circumstances of the case that –

- (a) the work was done with exceptional competence, skill or expertise;
- (b) the work was done with exception despatch; or
- (c) the case involved exceptional complexity or other exceptional circumstances. ...

(4) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, he must apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

(5) In determining the percentage by which the fees should be enhanced above the prescribed rate, the appropriate officer must have regard to –

- a. the degree of responsibility accepted by the fee earner;
- b. The care, speed and economy with which the case was prepared; and
- c. The novelty, weight and complexity of the case.

(6) The percentage above the relevant prescribed rate by which fees for work may be enhanced must not exceed 100%.

(7) The appropriate officer may have regard to the generality of proceedings to which this Order applies in determining what is reasonable within the meaning of this paragraph”.

7. In my judgment, it is plain from paragraph 15(3) that the amount of the special preparation fee must be calculated by reference to, and the adoption of, the rates specified in the Table figure 1, following paragraph 22, namely £45 per hour. This is common ground. However, I do not consider that the reference to paragraph 21 (Confiscation Proceedings) referred to in the LSC’s letter of 15 December 2009 has any bearing on the facts which arise on this appeal, since matters with which the Appellant firm was concerned involved a conspiracy to supply drugs which resulted in the acquittal of the Appellant’s client, Michael Browne in the Birmingham Crown Court. In my view, the operative paragraph is paragraph 24 which does not refer only to attendance at Court and routine items as the LSC has contended, but also to “preparation ... in respect of offences in class ... B ... [offences involving serious damage and serious drug offences as here]. (See the Table of Offences -Schedule 1 to the Funding Order 2007). It follows, in my view, that the reasons put forward in the LSC’s letter dated 15 December 2009 are incorrect. In my judgment, there is nothing within the paragraph mentioned in the letter that prevents the appropriate officer from allowing fees at more than the prescribed rates where, as here, the work done involves preparation and the offences in question fall within Class B in the Table of Offences, also as here. It follows that in my view, the LSC was wrong in principle in its decision to refuse enhancement on the grounds that, enhanced rates are not payable for special preparation”.

8. Mr Astbury urged on me that the work in this case met the test for allowing fees at more than the prescribed rates set out in paragraph 24(2) and that, accordingly, I should determine the percentage having regard to the matters set out in (5) of that paragraph. Whilst it would have been convenient to do so, I consider that it must first be for the LSC to decide whether the rates should be enhanced, having regard to my decision that paragraphs 22 and 24 of part 4 to Schedule 3 of the Funding Order does not prevent the Commission from allowing enhanced rates on special preparation. The appeal is, therefore, allowed to the extent that the LSC was wrong to consider that it did not have jurisdiction to allow an enhanced rate but that it is for the Commission to decide whether the Appellant in this case has satisfied the requirements set out in paragraphs 24(2) and (5) of the Order. The matter must therefore be sent back to the LSC for determination of this issue.

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