



Neutral Citation No.[2022] EWHC 1542 (SCCO)

Case No: T20217078

SCCO Reference: SC-2021-CRI-000139

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

Thomas More Building  
Royal Courts of Justice  
London, WC2A 2LL

Date: 9<sup>th</sup> June 2022

**Before:**

**COSTS JUDGE WHALAN**

**REGINA**

**v**

**SEAN FITTON**

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)  
Regulations 2013**

Appellant: **Lawrence and Co., Solicitors**

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

The appropriate additional payment, to which should be added the sum of £500.00 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE WHALAN

## Introduction

1. Lawrence & Co. ('the Appellants') appeal the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in respect of a claim submitted under the Litigator's Graduated Fee Scheme ('LGFS'). The issue is whether the Appellants are entitled to a graduated fee based on a 'cracked trial', as claimed, or whether it should be allowed as a 'guilty plea', as assessed by the Respondent.

## Background

2. The Appellants represented Mr Sean Fitton ('the Defendant') who appeared at Portsmouth Crown Court charged with conspiracy to supply Class A drugs. The background to this case is complicated and unique.
3. Sometime prior to 2020 the Defendant was arrested, charged, tried and convicted on an allegation of Grievous Bodily Harm. He was sentenced to a term of imprisonment. He was released on licence having served half his sentence.
4. He was then the subject of a new allegation of conspiring to supply Class A drugs. This charge triggered his recall on licence. When the Defendant was notified of his recall by his Probation Officer, he fled to the Republic of Ireland.
5. A European Arrest Warrant ('EAW') was then issued, based apparently on his recall from licence. An EAW is an enabling provision that turns on the existence of a domestic arrest warrant, so it may be that the issue of a EAW was incorrect in this case.
6. Then, in August 2020, the Defendant was arrested by the Garda in Ireland for offences allegedly committed in Ireland. This detention prompted his further arrest in Ireland on the EAW.
7. In February 2021 the Defendant was then extradited to the United Kingdom. He was returned to prison to complete his sentence for the GBH.
8. On 24<sup>th</sup> May 2021, while the Defendant was still in prison, he was taken to Basingstoke Magistrates' Court to appear on the drugs conspiracy allegation. No

judge was available and no hearing took place. Nonetheless the court sent the Defendant's case to Portsmouth Crown Court for a directions hearing. At no stage was the Defendant arraigned or asked to enter or indicate a plea. As the Defendant had 'special protection' arising from his extradition, it may well be that the process followed by the prosecution was incorrect.

9. The Defendant appeared at Portsmouth Crown Court on 23<sup>rd</sup> June 2021 for a Plea and Trial Preparation Hearing before HHJ Melville QC. It is clear from the Court Log (14:10) that there was "No arraignment". It seems that by then the prosecution was beginning to grapple with the complex procedural issues raised by the Defendant's case, so he was remanded in custody for a "review hearing in four weeks" (14:23).
10. The Defendant's case was re-listed For Mention on 30<sup>th</sup> June and 9<sup>th</sup> July 2021. By this stage, the prosecution, realising that the procedure followed hitherto was incorrect, requested that the case be remitted to the magistrates' court, so that the case could be regularised and "then start again" (30 June 2021, 15:15). At no point on either 30<sup>th</sup> June or 9<sup>th</sup> July was the Defendant arraigned or invited to indicate a plea. Indeed, on 30<sup>th</sup> June HHJ Melville QC indicated that the indictment should be stayed (Court Log, 15:30).
11. On 14<sup>th</sup> July 2021, the case was re-listed For Mention. By this stage the prosecution and the defence effectively agreed the appropriate procedure. The judge stayed the indictment (CL, 09:49) and the "Case [was] Closed" (09:52).
12. The Defendant was released from prison at the end of his sentence in about August/September 2021. It was evidently the prosecution's intention to return the Defendant's case to the magistrates' court and re-start the drugs conspiracy proceedings. Unfortunately, the case never re-started because the Defendant unexpectedly died on 3<sup>rd</sup> January 2022.

#### The Regulations

13. Legal Aid was granted to the Defendant on 20<sup>th</sup> May 2021 and so The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended in 2018, apply to this appeal.

14. Schedule 2, Litigator’s Graduated Fees Scheme, Part 6, contains the following relevant definitions:

*“Cracked Trial” means a case on indictment in which –*

*(a) a plea and case management hearing takes place and –*

*(i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and*

*(ii) either –*

*(aa) in respect of one or more counts to which the assisted person has pleaded guilty, the assisted person did not so plead at the plea and case management hearing; or*

*(bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the plea and case management hearing, declare an intention of not proceeding with them; or*

*(b) the case is listed for trial without a plea and case management hearing taking place;*

*“guilty plea” means the case on indictment which –*

*(a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and*

*(b) is not a cracked trial; ...*

#### Submissions

15. The Respondent’s case is set out in Written Reasons dated 4<sup>th</sup> May 2022. No appearance was made at the appeal hearing on 6<sup>th</sup> May 2022, but Mr Rimer, a Senior Lawyer at the LAA, filed helpful additional submissions by e-mail on 5<sup>th</sup> May 2022. The Appellants’ case is set out in Grounds of Appeal in the Appellants’ Notice and in a separate document entitled ‘Note on Costs’. Mr Daoud, a Solicitor Advocate, appeared at the hearing and made oral submissions for the Appellants.

#### My analysis and conclusions

16. The Appellants and the Respondent agree that this is an unusual – essentially unique – case and that the circumstances do not fit naturally within the regime laid down for the LGFS in the 2013 Regulations. They agree that ‘cracked trial’ or ‘guilty plea’ comprise the only realistic options and that neither apply perfectly.

17. Mr Rimer, for the Respondent, submits that the Determining Officer's decision was correct as the requirements for a cracked trial were not met. Ultimately the case was stayed following "technical argument", although it is accepted that this was a complex case involving "a large amount of prosecution evidence".
18. The Appellants, conversely, submit that this could not be a guilty plea, as at no stage at Basingstoke Magistrates' Court or Portsmouth Crown Court did the Defendant actually plead guilty (or enter any plea), notwithstanding five listings or appearances. On the contrary, so far as the claim must be either a cracked trial or a guilty plea, the circumstances favour clearly the former over the latter.
19. This is, as noted, an unusual case. My conclusion is that the submissions of the Appellants should be preferred to those of the Respondent. I agree with Mr Daoud that this could not properly be classed as a 'guilty plea', as at no stage did the Defendant enter a plea, guilty or otherwise. It seems to me that the fact of the guilty plea should be, at the very least, a prerequisite to a classification in the LGFS as a guilty plea. Conversely, in my view, the case does satisfy the technical requirements of a 'cracked trial'. A plea and case management hearing did take place on 23<sup>rd</sup> June 2021 (although in Portsmouth Crown Court it was termed a 'Plea and Trial Preparation' hearing). The case did not then proceed to trial, in circumstances where the 'for other reasons' category in 1(1)(a) (i) is seemingly satisfied. Ultimately the prosecution offered no evidence, the indictment was stayed and the case was closed, albeit with the intention clearly of re-starting in the magistrates' court in due course. The LGFS, as has been noted in numerous decisions, invokes a 'swings and roundabouts' system of remuneration, the operation of which can lead, in certain cases, to an applicant being either over or underpaid in a particular case. In fact, I do not see that a cracked trial assessment confers any windfall on the Appellants, as this was a complex, technical prosecution, leading to four Crown court appearances, and the submission of a 38-page Skeleton Argument, raising complex arguments in law were accepted ultimately by the prosecution.
20. Accordingly, this appeal is allowed and I direct that the Appellants LGFS claim should be paid as a cracked trial and not a guilty plea.

Costs

21. The Appellant have been successful in this appeal and I award costs of £500+ VAT, along with the £100 paid to lodge his appeal.

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