Neutral Citation [2022] EWHC 3106 (SCCO)

Case No: T20160298

SCCO Reference: SC-2022-CRI-000006

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 1/12/2022

Before:

COSTS JUDGE Brown

IN THE MATTER OF:

R v BRISSETT
Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013/Regulation 10 of the Costs in Criminal Cases (General) Regulations 1986

A2 SOLICITORS

Appellant

-and-

THE LORD CHANCELLOR

Respondent

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

2. The issue arising in this appeal is whether and, if so, how under the Litigators graduated fee scheme ('LGFS') (provided for under the Criminal Legal (Remuneration) Regulations 2013 (as amended) ('the Regulations')), the Appellants ('litigators' under the scheme) should be paid for work done by them in respect of three hearings in late 2021. The hearings occurred after the Defendant was arrested, over 3 years after

he had absconded before sentence having been found guilty at trial and then sentenced (in his absence).

3. The Appellants have already been paid a trial fee for the work done in 2018. The sums at stake are substantial as a further trial fee of some £89,000 is claimed, the Appellants contending that they are entitled to a second trial fee. This is notwithstanding that no further trial took place and that the hearings were in the nature of 'Mentions'. The Determining Officer held that no fee was payable at all, in particular that the Regulations made no provision for payment of a separate case fee, or hearing fee, in the circumstances of this case.

4. I initially listed this appeal form hearing remotely on 22 August 2002 but there were difficulties with the hearing notice (I am not sure that it was sent out) and I relisted the matter for 5 September 2022 of a hearing by video link. Mr. Joshua appeared for the Appellants – he is a solicitor and director of the Appellant. Ms Weisman, who is an employed solicitor, appeared for the Respondent (the Legal Aid Authority, 'the LAA').

5. The substance of the Grounds of Appeal was that the LAA were estopped from denying the Appellants' entitlement to second trial fee whatever the proper reading of the provision of the 2013 Regulations.

6. I was concerned as to whether the the doctrine of estoppel could apply but I was also concerned also as to whether that the rules properly construed do permit payment of a fee for the Appellants' work and that that matter had not been adequately considered. I set out my concerns at the hearing and requested further submissions on certain issues. I am grateful for the response, which is helpful, including in particular the skeleton argument of Mr. Morris, counsel, and a further skeleton argument from Mr. Joshua. I relisted the matter for a further video link hearing on 25 November 2022.

7. Although the LAA's position was somewhat caveated prior to the hearing on 25 November 2022 their position by the end of that hearing was that three - what I have referred to as 'after sentence' hearing - fees are properly due under Para. 16 of Schedule 2 of the Regulations for the hearings in 2021. (The caveat was that another formal application may be required for the fee but I indicated that it seemed to me that an application had been made for fees for the hearings and it was for me to determine the fees payable on the applications and in the light of that indication, no further point was taken on this).

Factual background

8. The Defendant faced two charges of being concerned in the supply of Class A drugs, in proceedings before the Winchester Crown Court. He was granted a representation order to enable the Appellants to represent him in October 2016. The Defendant appeared at the Crown Court on 4 January 2017 and entered a not guilty plea. The trial took place over five days between 8 and 12 January 2018. The Court put the matter over for sentencing until 30 January 2018. On that occasion the Defendant failed to attend and a warrant was issued for his arrest. On 19 March 2018 the matter came back before the court, with the Defendant having failed to surrender and no arrest having

been made. The court then sentenced him in his absence to a term of imprisonment of 6 years and 6 months.

9. On 14 September 2021, the Defendant was brought to court following the execution of the bench warrant, having been extradited from Ireland where he had been in custody for other matters. The court contacted the Appellant litigators asking them to represent him. The representation order was re-issued. I have seen a copy of the Court Log. Although not entirely clear it appears (by a process of inference from the subsequent evets) that there was an issue as to whether the time spent by the Defendant in custody in Ireland should be taken into account in respect of the sentence.

10. The matter was listed for further Mentions on 19 November 2021 and 2 December 2021. The Court Log discloses that the hearings in 2021 related at least to some extent to the issue of whether or not the Defendant's time in custody in Ireland was to be taken into account in relation to the length of his sentence in the UK. The log records that at the hearing on 19 November 2021, HHJ Evans QC observed "*seems out of time on the slip rule – only route would be to seek leave to appeal from the Court of Appeal"*. The judge directed that a transcript of the previous hearing be obtained and that the matter would be relisted on 2 December, with the defence to respond to a note by the prosecution on the slip rule by 1 December. That resulted in a further hearing, on 2 December at which the defendant was sentenced to 21 days to be served concurrently for his failure to surrender.

11. After the hearing on 14 September 2021, the Appellants claimed an fter sentence hearing fee. This was refused by the Respondent on the grounds that this was not payable under the LGFS scheme as the hearing of 14 September 2021 took place over 56 days after the sentence occurred, as the initial claim concluded on 19 March 2018 and the relevant provisions for the fee sought required the hearing to take place within this time period.

12. On 8 November 2021 the Appellants sought the advice of Sophie Hughes, who I understand to be a contract manager employed by the Respondent, as to how they could be paid. On 11 November 2021, the Appellants suggested ,by reference to paragraph 3.23(6) of the Crown Court fee guidance (the "Guidance") (see below), that they were entitled to be paid a further full trial fee for representing the Defendant at the hearings subsequent to sentence. In response Ms Hughes suggested that the guidance on which the Appellant relied "*does seem to apply to this scenario"*. On 11th November 2021, the Appellant submitted a fresh claim for a further full trial fee. That claim was however refused on 16 November 2021, on the basis that the trial had already concluded.

13. As I understand it, on 17 November 2021, the Appellant wrote to its account manager stating '*'I am minded to inform the court that we are unable to attend the hearing fixed for this Friday 19th November 2021 or to instruct counsel as the LAA's position is that despite having funding, we will not be paid. You will recall we discussed this matter and you indicated a member of the crime billing team agreed that S.3. 23 (6) of the Crown court fee guidance applies…..It seems to me that the LAA's position is that this matter concluded on 19 March 2018 and they have indicated we are not going to be paid for work we have been doing since September 2021. Therefore, on what basis are we to represent the client this Friday 19 November 2021…*''. The Appellants sought a redetermination, contending that paragraph 3.23(6) of the Guidance applied and that it

was entitled to a further fee. Ms Hughes informed the Appellant that "[they were] *covered to attend the hearing and* [the LAA were] *looking into how you can be paid"*. On 25 November 2021, Ms Hughes informed the Appellant by email that the Respondent considered that the work was still covered by the original trial fee but indicated that "*because we have agreed to cover your costs, we can pay an additional fee as a one-off"*.

14. The Respondent provided written reasons in support of its redetermination on 7 January 2022 in which the Officer said, in essence, that a trial fee having been paid no further trial fee could be due.

The main provisions, the scheme in general and the Guidance

15. A large number of provisions have been referred to in argument and I will endeavour to set them out so far as they are relevant to the arguments.

16. Regulation 5 of the Regulations provides:

(1) Claims for fees by litigators in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 2 to these Regulations.

(...)

(4) Subject to paragraph (5), a claim by a litigator for fees in proceedings in the Crown Court must be submitted to the appropriate officer in such form and manner as the appropriate officer may direct and must be accompanied by the representation order and any receipts or other documents in support of any disbursement claimed.

17. The term "*representation order"* is defined in regulation 2 as "*a document which records a section 16 determination"* – that is a determination under section 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), which empowers a relevant authority to determine whether an individual qualifies for representation.

18. Regulation 20 provides:

Representation for criminal proceedings: proceedings which are not to be regarded as incidental to the criminal proceedings from which they arise.

(1) The proceedings set out in paragraph (2) are not to be regarded as incidental to the criminal proceedings from which they arise.

(2) The proceedings are –

(...)

(b) proceedings for dealing with an individual who is alleged to have failed to comply with an order of the magistrates' court or the Crown Court

19. Regulation 24 provides:

(1) Having determined the fees payable to a litigator in accordance with Schedule 2, the appropriate officer must authorise payment accordingly.

(2) Where the appropriate officer determines that the fees payable under paragraph (1) are greater than or less than the amount claimed by the litigator under regulation 5(1), the appropriate officer must notify the litigator of the amount the appropriate officer has determined to be payable.

20. Regulation 28 provides :

(1) Where –

(…)

(c) a litigator is dissatisfied with –

(i) the determination by the appropriate officer of the fee payable to the litigator in accordance with Schedule 2; or

…

the advocate, trial advocate or litigator, as the case may be, may apply to the appropriate officer to redetermine those fees, to review that decision or to reclassify the offence, as appropriate.

...[my underlining]

21. Regulation 29 so far is relevant provides as follows:

(1) Where the appropriate officer has given his reasons for his decision under regulation 28(8), a representative who is dissatisfied with that decision may appeal to a Costs Judge.

(…)

(12) The Costs Judge has the same powers as the appropriate officer under these Regulations and, in the exercise of such powers, may alter the redetermination of the appropriate officer in respect of any sum allowed, whether by increasing or decreasing it, as the Costs Judge thinks fit. [my underlining]

22. Schedule 2 to the Regulations applies to claims by litigators for fee and thus applied to the Appellants' claim. It provides:

Subject to sub-paragraphs (2) to (11), this Schedule applies to—
(a) every case on indictment; and
(b) the following proceedings in the Crown Court—
(i) an appeal against conviction or sentence;
(ii) a sentencing hearing following a committal for sentence to the Crown Court; and
(iii) proceedings arising out of an alleged breach of an order of the Crown Court (whether or not this Schedule applies to the proceedings in which the order was made).

23. "Case" is defined under paragraph 1(1) of Schedule 2 as "*proceedings in the Crown Court against any one assisted person—*

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

(b) arising out of a single notice of appeal against conviction or sentence, or a single committal for sentence, whether on one or more charges; or
(c) arising out of a single alleged breach of an order of the Crown Court,
and a case falling within paragraph (c) must be treated as a separate case from the proceedings in which the order was made."

24. Part 2 of the schedule 2 set out the Graduated Fees for Guilty Pleas, Cracked Trials and Trials. The scheme provides for a litigator to be remunerated by reference to a formula which takes into account the number of served pages of prosecution evidence as defined in the Regulations, the pages of prosecution evidence ('PPE') subject to a cap of 10,000 pages), the length of the trial and whether the defendant pleads guilty, whether the case should be taken to be a 'cracked trial' (as defined) or proceeds to trial.

25. Paragraph 14 provides so far as material:

General provisions
…
(2) Except as provided under this Part, remuneration for all work undertaken by a litigator in a case to which Part 2 applies is included within the fee set out in Part 2 of this Schedule as appropriate to—
(a) the offence for which the assisted person is charged or tried;
(b) whether the case is a cracked trial, guilty plea or trial; and
(c) the number of pages of prosecution evidence.

26. Paragraph 16 of Schedule 2 sets out circumstances in which a separate, single hearing fee, additional to any fee already paid- an 'after sentence' hearing fee as I have called it, may be payable;

16. – Fees for hearing subsequent to sentence

(1) The fee payable to a litigator instructed in relation to a hearing under an enactment listed in sub-paragraph (2) is that set out in the table following paragraph 19.

(2) The enactments are –

…

(a) section 385 of the Sentencing Code (alteration of Crown Court sentence).

27. Section 385 of the Sentencing Code 2020, provides "*the Crown Court may vary or rescind the sentence at any time within the period of 56 days beginning with the day on which the sentence was imposed"*. Save in circumstances which do not apply here, the court must have been constituted as it was when the sentence was imposed: see subsection (4).

28. The table after paragraph 19 provides that the fee for an 'after sentence' hearing under paragraph 16 is £155.32.

29. Paragraph 23 of Schedule 2 is headed *Warrant for Arrest* and provides:

(1) This paragraph applies where—

(a) the assisted person fails to attend a hearing;

(b) at that hearing the court issues a warrant for the arrest of the assisted person, pursuant to section 7(1) of the Bail Act 1976(1) ("the warrant"); and

(c) the case does not proceed in the absence of the assisted person.

(3) Where in a case on indictment the warrant is not executed within three months of the date on which it was issued, the fee payable to the litigator is—

(a) where the warrant is issued at or before the plea and case management hearing, the fee payable for a guilty plea in accordance with paragraph 6 or where appropriate paragraph 8;

(b) where the warrant is issued after the plea and case management hearing but before the trial, the fee payable for a cracked trial in accordance with 3 paragraph 6 or where appropriate paragraph 8, as appropriate to the Class of Offence with which the assisted person is charged; and

(c) where the warrant is issued during the trial, and the trial is aborted as a result, the fee payable for a trial as if the trial had ended on the day the warrant was issued.

(3) [..]

(4) Sub-paragraph (5) applies where— (a) a fee has been paid, or is payable, to the litigator in accordance with subparagraph (2); (b) the warrant is executed within 15 months of the date on which it was issued; (c) the case proceeds after the warrant has been executed; and (d) the litigator submits a claim for fees for the determination of the litigator's overall remuneration in the case, in accordance with regulation 5.

(5) Where this sub-paragraph applies—

(a) the appropriate officer must deduct the amount paid or payable in accordance with sub-paragraph (2) from the amount payable to the litigator on the final determination of fees in the case; and

(b) if the fee paid or payable in accordance with sub-paragraph (2) is greater than the amount payable to the litigator on the final determination of fees in the case, the appropriate officer may recover the amount of the difference by way of repayment by the litigator.

[My underlining]

The Guidance referred to above which relates to this (para 23) is as follows:

3.23 Warrant of arrest

1. This payment type is an interim Payment (or 'fee advance'), which is claimable in situations where the defendant absconds and a warrant is issued for his or her arrest

2. Where a warrant is issued for a defendant who fails to attend, (and the case does not proceed in his/her absence) and the defendant is rearrested (e.g., the warrant is executed) within three months, the case will be treated as if there was no break for the purpose of payment. This means the litigator will claim a litigator fee at the conclusion of the case as is normal. Therefore, only one fee is payable.

3. Where the warrant has not been executed after three months since the issue of the warrant, the litigator can claim an Interim Payment for the portion of the case that occurred before the client absconded. Provision for such payments is made within CCLF under Bill Type 'Fee Advance, sub bill 'Warrant'.

4. At the conclusion of a case, where a client has been subsequently rearrested (the warrant is executed), the interim warrant payment may be offset against the final fee for the case. This depends on the timing of the execution of the warrant.

5. Where the warrant is executed more than three months after the issue of the warrant, but within 15 months of the issue of the warrant, the interim warrant payment will be offset against the final fee at the end of the case.

6. Where the warrant is executed more than 15 months after the issue of the warrant and the same litigator represents the client in the case, the litigator can claim both the interim warrant payment and a whole new LGFS payment for the rest of the case. Therefore, two fees are claimable.
[my underlining]

Decision and reasons

30. There is no provision entitling a litigator to be paid a separate fee for a hearing listed for the execution of a bench warrant. The fee for such a hearing falls within the scope of the graduated trial fee determined under Part 2 of Schedule 2 (and is the effect of paragraph 14(2)). This is not disputed. I agree that this is part of the so-called 'swings and roundabouts' of the scheme.

31. I raised the question as to whether despite the representation order having been re-issued the work undertaken in 2021 might properly be regarded as work further to a new case. It seems to me however that it is clear, looking at the definition of a 'case' in the Regulations at Paragraph 20 of the Criminal Legal Aid (General) Regulations 2013, that the Regulations do not provide for a hearing listed for the execution of a bench warrant to be a separate 'case' from the main proceedings. Otherwise as Mr. Morris said, to be paid, a litigator would need to make a fresh application for a separate Representation Order each time a warrant was issued and a hearing was subsequently listed for its execution. In any event the parties are agreed that it could not be said that under the rules there was a new 'case' for this purpose.

Paragraph 23 of the schedule 2

32. It also seems to be clear that paragraph 23 of Schedule 2 is of no application to this case. Sub-paragraph 23(1)(c) requires that "*the case does not proceed in the absence of the assisted person"* for the section to apply. It was initially, as I understood it, common ground that the paragraph could not apply on the understanding that the case

did proceed in the Defendant's absence. Belatedly (as I saw it), Mr Joshua sought to argue that the paragraph did apply because of the possibility of further matters arising such as here where there was a hearing after sentence; the possibility of such hearing might in some way prolong the proceedings so that it could be said that the subsection was not satisfied. I however reject this argument: it seems to me (looking a the matter in context) it is clear that the question is not whether there was no possibility of further hearing such that the case has, for all purposes, ended. The trial was complete and the Defendant was sentenced in his absence. On a plain reading of the provisions, it seems to me that the case did proceed in his absence.

33. In the circumstances it does not seem to me to be necessary to deal with the meaning of paragraph 23 in great detail as I do not think it applies but, in the event, I agree with Mr. Morris that paragraph 23 deals with the situation where proceedings are brought to a halt for more than three months because of the non-appearance of a defendant and ensures that a litigator receives an interim payment for the work they have done by that point in proceedings. If the warrant issued at that hearing is executed within three months, the litigator is not entitled to an interim payment under paragraph 23, paragraph 23(2). However, where the warrant is not executed within three months, the litigator may then apply to be paid for the work done up to that date: paragraph 23(2).

34. Where the warrant is executed between three and fifteen months after it has been issued, the litigator is entitled on the conclusion of the trial to apply for payment for the trial under Regulation 5 in the ordinary way, but the appropriate officer must deduct the amount already paid for the work done up to the issue of the warrant, in accordance with paragraphs 23(4) and (5). If, after fifteen months has passed, the warrant has not been executed and the trial has not resumed, paragraph 23(5) ceases to apply: if the defendant is brought back before the court after fifteen months and the trial resumes, the litigator may then submit a claim for the determination of their overall remuneration in the case. In such a case, the appropriate officer would not be required by paragraph 23(5) to deduct from the fixed trial fee the interim payment to which the litigator would be entitled under paragraph 23(2).

35. It is not necessary to determine whether there would strictly be two trial fees or one fee by way of interim payment and another trial fee against which no credit was required for the interim payment: it may be that the litigator would in effect be entitled to claim two trial fees but the interim payment would only be payable if the defendant's absconding made it impossible for the trial to be continued. Following the defendant's arrest, it may well be necessary to empanel a new jury and to start the trial afresh. In any event there may in effect be two substantial hearings (one of them being a trial) separated by a period of at least fifteen months. In that event, it is perhaps important to note, any hearing to deal with the execution of a bench warrant would fall within the scope of the interim payment and the further fee paid, just as it would if the warrant were executed within fifteen months.

36. Mr. Joshua relied upon the Guidance as grounding his entitlement to two trial fees but it is clear (see *R v Eddowes* [2011] EWHC 420 (QB) for the avoidance of any doubt) that this is just guidance for those who operate the scheme on a day to day basis and is not a source of law. As I have interpreted the Guidance it is not clear to me that there is indeed any material inconsistency with the Regulations. As is however clear, an entitlement to an interim payment under paragraph 23 of Schedule 2 arises

only where proceedings are interrupted and brought to a halt by a Defendant's failure to appear. In this case however, the warrant was issued after trial and at the sentencing hearing; so the Appellants received a full fee. As I have said the case did in my view proceed in the Defendant's absence, so the condition in paragraph 23(1)(c) is not satisfied.

Estoppel?

37. Turning then to the issue of estoppel raised by the Appellants. They rely upon the representations made, in effect by the LAA, on and after 14 September 2021 which I have referred to above.

38. It seems to me that I should reject this case for a number of reasons.

39. Firstly, I doubt that there can be scope for the operation of the private law concept of estoppel in the operation of these Regulations. In *R (Reprotech Ltd) v East Sussex CC* [2003] 1 WLR 348, Lord Hoffman made this clear in his judgment at [33] he said that it is "unhelpful" to introduce private law concepts of estoppel into planning law and went on to say,

> *"…As Lord Scarman pointed out in Newbury District Council v Secretary of State for the Environment [1981] AC 578, 616, estoppels bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into "the public law of planning control, which binds everyone"…*
>
> *[34] There is of course an analogy between a private law estoppel and the public law concept of a legitimate expectation created by a public authority, the denial of which may amount to an abuse of power… But it is not more than an analogy because remedies against public authorities also have to take into account the interests of the general public which the authority exists to promote. Public law can also take into account the hierarchy of individual rights which exist under the Human Rights Act 1998, so that, for example, the individual's right to a home is accorded a high degree of protection… while ordinary property rights are in general far more limited by considerations of public interest…*
>
> *[35] It is true that in early cases… Lord Denning MR used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of estoppel seemed useful. In the Western Fish case [1981] 2 All ER 204 the Court of Appeal tried its best to reconcile these invocations of estoppel with the general principle that a public authority cannot be estopped from exercising a statutory discretion or performing a public duty. But the results did not give universal satisfaction: see the comments of Dyson J in the Powergen case [2000] JPL 629, 638. <u>It seems to me that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet</u>. "*[my underlining]

40. The 2013 Regulations provide a self-contained code and a claim is not founded on private contractual principles. It seems to me (in the absence of more detailed argument on this point) that if there were any remedy for the representations made it would be

by way of judicial review. The role of the Determining Officer and the Costs Judge on appeal is to apply the Regulations (as the Regulations I have cited above provide). It seems to clear in any event that as a matter of principle an estoppel cannot ground an entitlement where none existed (see *Chitty on Contracts* (34th Edn) at 6-106): as it is often put, it cannot used as a 'sword' rather than a 'shield'. Thus, even if such a principle of law were available in these proceedings, I do not think it would assist the Appellants.

41. Moreover, I am not, in any event, satisfied that there was in fact any representation that the Appellants relied upon which could be said to ground an entitlement to trial fees. The highest it could be put is that the Appellants could reasonably have relied upon a representation that they would be paid for the latter two hearings. The only effective representation at the relevant time, that is before the two latter hearings, was that the Appellants were "*covered to attend the hearings*" and that the LAA was "*looking into how [they] could be paid*". The representation that clause 6 of the Guidance 'seemed' to apply had been superseded by other representations (and the refusal of the claim for a trial fee) before the hearing on 19 November. In short, I am not satisfied that the Appellants did carry out any substantial work on the basis of an understanding or representation that they would get two trial fees. Since I have decided that the Appellants are entitled to payment for the hearings, the case in estoppel would, accordingly, add nothing even if it were open to the Appellants to rely upon such a case in principle.

Paragraph 16 – an after sentence hearing fee?

42. There was a slightly odd feature of the hearing in November which was that Mr. Morris, for the LAA, ,appeared to be arguing for payment under this provision and Mr. Joshua was arguing that it did not apply. I am of course required to apply the law as I see it.

43. It is suggested that it was said on behalf of the Defendant in the course of the hearings in 2021 (possibly by the prison service) that the date on which the sentence was 'imposed' for the purposes of section 385 of the Sentencing Code 2020 was the date on which the Defendant was brought before the court following the issue of the warrant, so that it was open to the Defendant to rely on section 385. The log records that on 19 November the judge dealing with the matter said that he could not send case to the judge who had passed sentence as this was "*outside the 54 days for the Slip Rule from 14 September 2021. Today's hearing was instigated by the prison*". The judge however gave the directions I have referred to.

44. It appears that the court at these hearings did not have jurisdiction to make any order varying the sentence, not only because of the time limits under section 385 but also because the court was not constituted as it was when the sentence was imposed. Nevertheless Mr. Morris said, the paragraph refers to "*...a hearing under* [the] *enactment"* Thus even if, as appears to be the case, the court had taken the view that it <u>did not</u> have the jurisdiction to alter the defendant's sentence under section 385 of the Sentencing Code, the fact that it had to consider whether the defendant's sentence should be varied meant that the hearings were under that enactment. That was the purpose for which the hearings were listed.

45. As Mr. Morris pointed out, the Appellants might be considered to have thought that this was the case at least in respect of the first hearing, since, on 15 October 2021 they claimed an after sentence hearing fee of £155.32.

46. That claim was rejected by the Respondent on 21 October 2021 on the basis that "*the hearing you have claimed for took place 56+ days after the sentencing occurred, and therefore is not payable under the LGFS"*. In Mr. Joshua's favour I think the LAA were wrong to do so for the reasons advanced by Mr. Morris. The contrary position is that nothing is payable which seemed to me would amount to a clear lacuna in the rules, with serious consequences for the representation of defendants and for litigators (noting the work done was many years after the trial, and after what may have been considered was a final fee, had been paid). It seems to me in any event that the provision must be read in the way suggested by Mr. Morris.

47. It seems to me to me for the reasons set out above, plain that the Appellants are not entitled to second trial fee. The Appellants are entitled to three after sentence hearing fees.

48. I should perhaps add that questions were raised as to how the advocates were paid for their work in 2021. Both sides gave different accounts as to how much the advocates were paid. I was not satisfied that I could draw anything from this. It seems to me in any event that the entitlement of the advocate under Schedule 1 to the Regulations is to a fee for a "*standard appearance"* fee which, it seemed to me, probably did not assist the Appellants.

49. As to the costs of the appeal, the parties have 7 days from receipt of this decision to make any representation to me.

COSTS JUDGE BROWN