Neutral Citation No. [2023] EWHC 1477 (SCCO)

Case No: T20180347

SCCO Reference: SC-2022-CRI-000133

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 7 June 2023

Before:

COSTS JUDGE LEONARD

R
v
VAVLIC

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

Appellant: Cohen Cramer Solicitors

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 £500 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE LEONARD

1. The Appellant represented Radoslav Vavlic ("the Defendant") in confiscation proceedings under the Proceeds of Crime Act 2002 ("POCA"). This appeal concerns payment for that work, which is governed by paragraphs 26 to 29 of Schedule 2 to the Criminal Legal Aid (Remuneration) Regulations 2013. The relevant provisions, as in force as at the date of the Representation Order on 14 and November 2019, are as follows.

2. Paragraph 26(2) of Schedule 2 identifies the classes of work for which payment may be made:

> "(a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, preparing and perusing documents, dealing with letters and telephone calls, instructing an advocate and expert witnesses, conferences, consultations and work done in connection with advice on appeal;
> (b) attending at court where an advocate is instructed, including conferences with the advocate at court;
> (c) travelling and waiting; and
> (d) writing routine letters and dealing with routine telephone calls."

3. Paragraph 26(3) provides that:

> "The appropriate officer must consider the claim, any further particulars, information or documents submitted by the litigator under regulation 5 and any other relevant information and must allow such work as appears to him to have been reasonably done in the proceedings."

4. The "appropriate officer", for present purposes, is the Legal Aid Agency ("LAA") 's Determining Officer.

5. Paragraph 26 (5) provides that the Determining Officer must allow fees

> "… as appropriate to such of the following grades of fee earner as the appropriate officer considers reasonable—
> (a) senior solicitor;
> (b) solicitor, legal executive or fee earner of equivalent experience; or
> (c) trainee or fee earner of equivalent experience."

6. Paragraph 27 prescribes the hourly rates at which payment will be made.

7. Paragraph 29 confers upon the Determining Officer a discretion to increase those 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 27 for preparation, attendance at court where more than one representative is instructed, routine letters written and routine telephone calls…
>
> (2) The appropriate officer may allow fees at more than the prescribed rate where it appears to the appropriate officer, 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 exceptional 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, the appropriate officer 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 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 these Regulations apply in determining what is exceptional within the meaning of this paragraph."

The Background

8. According to the Determining Officer's written reasons, the Defendant, on 25 November 2018, was seen to meet one Ary Majeed, who was under surveillance. Ary Majeed was seen to pass to the Defendant a bag later found to contain £125,035 in cash.

9. The Defendant pleaded guilty on 16 July 2019 to money laundering. The basis of that plea was not accepted by the prosecution. Following discussion between counsel, the plea was accepted on the basis that the Defendant was a trusted courier of high amounts of criminal money, and probably also took a role in the management of a criminal enterprise. Images on his phone of production-line machinery for packaging cigarettes were taken as evidence that he arranged the production and shipment of cigarettes on a large scale, as was the fact that he travelled to Dubai. On that basis, the Defendant was sentenced to 27 months imprisonment.

10. The confiscation proceedings followed. Representation was transferred to the Appellant (which had not represented the Defendant in the substantive proceedings) on 14 November 2019.

11. Shortly after the Appellant served the Defendant's section 17 statement, the Appellant was notified by the Crown's "Specialist Fraud Division" that the Defendant would be further charged, together with Ary Majeed, with conspiracy to fraudulently evade excise duty. Having been released from prison on 9 October 2020, the Defendant was granted bail in relation to the second charge but absconded. An application that the second charge be stayed as an abuse of process succeeded in December 2020.

12. Following numerous hearings, on 29 April 2022 the prosecution concluded that it was no longer in the public interest to continue the POCA proceedings and they were discontinued.

The Appeal

13. This appeal concerns a number of decisions made by the Determining Officer. They are an enhancement applied to the prescribed hourly rate for non-routine work at 50%, rather than the 100% claimed by the Appellant; the allowance of a number of timed attendances as routine items; the disallowance of time spent in preparing short attendance notes; the disallowance of time spent on applications for prior authority for disbursements; the disallowance of time spent waiting for a "CVP" (Cloud Video Platform) hearing; the disallowance of time spent in discussion between fee earners; and the application of a grade C rate to time spent by a grade B fee earner with counsel as a "mention" hearing on 16 December 2019 to review the confiscation proceedings timetable.

14. I will deal with these decisions one at a time.

Enhancement

15. I have extracted the following detailed account of the confiscation proceedings from a "Special Features Note" submitted by the Appellant to the Determining Officer in support of the Appellant's claim for a 100% enhancement on the prescribed hourly rates for all preparatory and attendance work undertaken by the Appellant's Grade B fee earners.

16. I should mention that in that note, the Appellant argued that once the threshold for enhancement was passed, a 100% enhancement should automatically follow. That argument has been rejected by Costs Judges in a number of recent decisions, including my own judgment in *R v Hinchcliffe* (SC-2019-CRI-000109, 16 March 2020). It was not pursued on appeal, but the Appellant maintained that a 100% enhancement could be justified on the merits.

17. The note is not always easy to follow, but I believe that this is the essence of it.

18. The Defendant was of Slovakian origin, resident in Slovakia with his wife and two children. His command of the English language was very limited. This, says the Appellant, give rise to enormous difficulties in obtaining the Defendant's instructions in the course of the confiscation proceedings. Interpreters were needed, as well as assistance from a friend and the wife of the Defendant.

19. On 19 September 2019 the Defendant was sentenced to a term of 27 months' imprisonment. He was serving his sentence at HMP Featherstone when he requested that the Appellant act for him. At the time of the transfer of representation on 14 November 2019, the timetable set for the confiscation proceedings had not been met and the Appellant had to work, as the Appellant puts it, "tirelessly" to comply with the POCA timetable despite the difficulties faced when obtaining instructions from this Defendant. Matters were made no easier by the onset of COVID and the Defendants incarceration in prison.

20. Following his meeting with Ary Majeed on 25 November 2018, the Defendant drove away. He was stopped a short time later on the M1 and was arrested on suspicion of money laundering. HMRC investigations discovered links between the Defendant and criminality involving cigarettes upon which no duty had been paid and it was clear from subsequent enquiries that this was not the first time the Defendant had visited the UK.

21. The Crown alleged that there was evidence of previous telephone contact between the Defendant and Ary Majeed and that they were both involved in cigarette smuggling organised from Romania and Iraq. The Defendant when interviewed upon arrest made a "no comment" interview apart from saying he owned a building company in Slovakia and paid himself 10,000 euros per month.

22. Whilst the Crown at the sentence hearing accepted that the Defendant was being dealt with for matters only on which he was indicted and that he was of previous good character, the sentencing Judge concluded that he was a trusted courier of large amounts of criminal property and that the crime involved in the large-scale production and shipment of illegal cigarettes.

23. The Defendant was very anxious for the confiscation proceedings to end, so that he could return home to Slovakia. Taking instructions and dealing with a Defendant in these circumstances was, says the Appellant, an exceptional feature of the case.

24. After service of the section 17 Statement, the Defendant was hopeful of a swift conclusion with the Crown accepting a benefit figure and available amount of the £125,035 seized upon the Defendant's arrest. However, much to the surprise of the Defence, correspondence was received from the Crown's Specialist Fraud Division that the Defendant was now to be charged with "Conspiracy to Fraudulently Evasion of Excise Duty", the alleged co-conspirator being Ary Majeed. This radically altered the Defendant's position.

25. It was necessary for the Appellant's Confiscation Department to discuss and liaise with Mark Jackson, one of the Appellant's Criminal Advocates, who was representing the Defendant in relation to the new set of criminal charges. This led to the POCA case becoming more complex and protracted, and to the Defendant becoming even more upset and anxious as he was determined to go home as soon as possible.

26. Attempts to negotiate a settlement of the confiscation proceedings were made but the Crown was adamant that there was no point in trying to reach a settlement in view of the fact that the Defendant would be facing a new conspiracy charge.

27. On 19 December 2019 the Crown served a section 16 Statement asserting a benefit figure of £422,497.71 against the Defendant. This figure was based on the £125,035 seized upon arrest and the duty allegedly evaded on street sales of tobacco. The Crown also alleged, based upon enquiries made in other jurisdictions, that the Defendant had an interest in six companies in Slovakia and Poland as well as a further interest in two other companies that had been mentioned in this Defence Case Statement. The Crown sought disclosure of bank accounts, bank statements and any property held by those companies.

28. The Defendant disputed the Crown's benefit figure and vehemently denied any involvement in the distribution or sale of illicit cigarettes. The Defendant also maintained that he was now bankrupt, but the Judge noted that in the Defendant's previous bail applications submissions had been made to the effect that the Defendant was a strong businessman with ties in Slovakia. The Judge required disclosure of documentary evidence of the Defendant's assets, as a previous Section 18 Statement claimed he had no financial assets.

29. Detailed instructions were required from the Defendant's wife as to the production of this documentation. She did provide some documents to support the Defendant's instructions as did the friend who was also assisting the defence. Despite the language difficulties, a very detailed and extensive section 17 Statement was served.

30. The Defence averred that the Crown had formulated the benefit figure without sufficient grounds. The alleged link between the Defendant and evasion of duty on cigarettes was entirely tenuous. It was wrong in principle for the Crown to formulate a benefit figure by reference to alleged evasion of duty where the Defendant had not been convicted of any such offence. The Defendant's Guilty plea did not incorporate any admission that duty had been evaded. Moreover, duty only becomes payable when tobacco is actually imported into the UK.

31. A confiscation order could not be made on the basis advanced by the Crown. The only "benefit" properly attributable to the Defendant would be the £125,035 seized on his arrest. The sentencing Judge had not been prepared to attribute a figure to the Defendant, as one could not be calculated.

32. Further, the Crown had identified a surety of £100,000 as part of the Defendant's bail conditions as being part of the Defendant's available amount but the Defendant maintained this was his wife's money, not his, and that should not form part of the available amount.

33. The Defendant provided extensive financial information including bank statements, tax returns, company records and business registers from each of the companies. Prior authority was granted for the translation of Polish documents into English when it was established that the Defendant had a business in Poland. The Defendant's instructions were that he was not aware that he was still on record as a director of the company, as it had been inactive for a number of years. Documentary evidence showed that the company had no value.

34. A supplementary section 16 Statement was served by the Crown. It confirmed that on 20 February 2020 the Defendant had been charged with fraudulent conspiracy to evade excise duty in relation to 1,471,000 illicit cigarettes. The supplementary section 16 Statement put the Defendant to strict proof of disclosure of various document overseas relating to companies in which it was alleged the Defendant had an interest and in essence rebutted all the defence submissions contained within the section 17 Statement. Invariably, this led to repeated requests for prior authorities to enable interpreters and translators to be instructed by the defence and instructions to be taken from the Defendant with the ongoing assistance of his wife and friend.

35. In a further supplementary section 16 statement served on 20 March 2020 the Crown revealed that further enquiries were ongoing with the Slovakian authorities to test the validity of the Defendant's documents and to identify any yet unknown assets. Intelligence received from the Slovakian authorities highlighted significant cash withdrawals in excess of £500,000, between 1 January 2018 and 31 December 2018 from a business account held in the name of the Defendant. Given that the Defendant was arrested on 25 November 2018 the timing of these withdrawals was significant.

36. The Crown served what the Appellant describes as "a multitude" of evidence in relation to the second charge. These documents had a huge bearing on the confiscation proceedings given that they related to the Defendant's arrest. Perusal of that documentation in early June 2020 was an innate and inseparable part of the preparation of the confiscation proceedings. Skeleton arguments were served both in respect of the confiscation and the duty evasion proceedings.

37. The Appellant continued to prepare for a contested confiscation hearing, the timetable becoming, inevitably, interwoven with the new duty evasion proceedings. Counsel was instructed to settle an abuse of process application and skeleton arguments for the confiscation hearing listed to be heard in August 2020. This in turn was dependent on the outcome of an abuse of process application in the duty evasion proceedings.

38. The Defence opposed the Crown's request for an extension of time to serve its final position in relation to the POCA proceedings and to extend the POCA timetable despite having been granted nearly four months since the last hearing in which to locate further information from other jurisdictions. A brief to counsel was prepared but due to a shortage of Court time the case was vacated to be heard in October 2020. This led the Defendant, who remained in custody until 9 October 2020, to be hugely frustrated at the Court system.

39. On 16 December 2020 the Defence was served with yet a further section 16 Statement, some 242 pages in length. The Crown's figures appeared to be very unclear in distinguishing between Particular Criminal Conduct and Statutory Assumptions. It appeared that the Crown was simply asking the Defendant to comment upon the assets said to have been found in Slovakia.

40. Counsel, in a telephone conference two days after service of the section 16 Statement, agreed with the Appellant that the Defendant had already disclosed his assets and that it was unclear whether or not the new documents from the Crown identified assets the Defendant had previously disclosed. It was also unclear whether corporate assets identified by the Crown were available to the Defendant. Counsel also agreed with the Appellant that the latest section 16 Statement did not add or explain any of the documents served as Appendices, so that in fact the benefit figure was unchanged. The Crown had yet to address arguments of principle to the effect that the benefit figure must be limited by reference to the offence of which the Appellant had actually been convicted, and the present section 16 Statement did not progress the case or clarify the Crown's position.

41. The abuse of process application in relation to the "second charge" was heard over two days. The application was successful and the proceedings were stayed against the Defendant, who at this stage had breached his bail conditions and absconded.

42. The Crown then sought to extend the two year time limit under Section 14 of POCA which the defence opposed, skeleton arguments being served by both the Defence and the Crown. After a contested hearing the Judge found there were "exceptional circumstances" and extended the permitted period to 24 September 2021. The Judge concluded that it would not have been appropriate to conclude the first confiscation proceedings until the second proceedings were concluded because of the interrelationship between the two matters which enabled the Defendant to engage without fear of further charges arising.

43. The confiscation proceedings continued, the Defence now asserting that as a result of the second charge being stayed due to abuse of process the benefit figure relevant to that second charge was no longer attributable to this Defendant. In a letter to the court dated 12 August 2021, the Defence invited the court to make a confiscation order setting the benefit figure and available amount at £125,035. The Crown opposed that submission and a brief to counsel was prepared to represent the Defendant at a Directions hearing on 20 August 2021 at which the Crown served some 500 pages of bank statements from Slovakia. These documents required translating and as a result the Judge extended the permitted period, finding "exceptional reasons" for permitting extension. The Judge also ordered that Crown serve a further section 16 Statement by 4 October 2021 with a Defence response by 13 December 2021. A final hearing was fixed for 7 March 2022.

44. The Crown then served a further three section 16 Statements dated 27 September 2021, 8 November 2021 and 4 December 2021, bringing the total number of served section 16 statements to six.

45. Contact with the Defendant was renewed, and a detailed section 17 Response Statement was prepared in which the Defence criticised the Crown's disclosure and presentation of the documentation obtained from other jurisdictions, pointing out that the Crown's case was still unclear. The bank statements served were illegible and "scheduled and translated" versions referred to had not been served upon the Defence.

46. The Defence also objected to the translation of bank statements using "Google Translate". Moreover, the Crown had not detailed an overview of what they were asserting as "Particular Criminal Conduct" or "Statutory Assumptions" and the table provided had no corresponding Appendices to cross reference the payments.

47. Because the Defence could not, on the basis of the section 16 statements served, understand how the Crown was putting its case against the Defendant, the hearing on 7 March 2022 was treated as a Directions hearing, the Judge again finding "exceptional circumstances" to extend the permitted period to 4 May 2022. The Crown was required to serve a final section 16 Statement by 4 April 2022 in response to the Defence's section 17 Response Statement, with a further Directions hearing fixed for 8 April 2022 and a final hearing listed for two days to commence on 3 May 2022.

48. The Crown failed, as ordered, to respond to the section 17 Response Statement. A Directions hearing eventually took place on 27 April 2022 at which a new Crown lawyer was in attendance and the Court granted the Crown an extra two days to consider its position. Consequently, on 29 April 2022 the Crown accepted it was unable to put a figure on any general criminal conduct and that there was a dispute in relation to the level of particular criminal conduct.

49. As a result of the age of the POCA proceedings and the absence of the Defendant the Crown concluded it was no longer in the public interest to continue the confiscation proceedings, which were discontinued.

50. The Appellant argues that the case was handled with exceptional despatch and that, if not unique, it was at least very unusual. The Crown, having effectively accepted for sentencing purposes that the Defendant played limited role in the criminal business, changed its position to characterise him as a head, or possibly the head, of an organised crime group and attempted to lever that approach into the confiscation proceedings.

51. The Determining Officer, in allowing a 50% enhancement, referred to the judgment of Costs Judge Rowley in *R v Smith-Ajala* (SCCO 2/17, 10 November 2017) in which he endorsed the practice of the LAA in grading the level of exceptionality in cases "so as to reward the most complex cases at a higher level than those which are less so" (paragraph 16 of his judgment refers). I agreed with that approach in *R v Hinchcliffe*, explaining in detail my reasons for concluding that could not be right, wherever and enhancement of hourly rates was required, to set that enhancement automatically at 100%.

52. In this case the Determining Officer's conclusions were summarised in this way:

> "In my view the degree of exceptional competence, skill and expertise demonstrated by the fee earner with conduct of this case, taken with the circumstances of the case itself is within the middle band of cases considered by the Criminal Cases Unit. I have therefore applied an enhancement of 50%."

53. Having considered the Appellant's submissions, I agree with the Determining Officer. As Costs Judge Rowley said in *R v Smith-Ajala*, in reaching a conclusion about the appropriate level of enhancement it is necessary to compare exceptional cases in a broad-brush assessment. This case strikes me as comparable in some ways to *R v Smith-Ajala*, which involved an established benefit figure of £1,204,661.91; multiple section 16 and section 17 statements; voluminous records; disputed land in Nigeria; foreign exchange market and foreign exchange control issues and weekend preparation. In *R v Smith-Ajala* Costs Judge Rowley agreed with the enhancement allowed by a Determining Officer at 50%.

54. I agree that the Crown's attempt to introduce into the confiscation proceedings alleged assets obtained from alleged criminal conduct of which the Defendant had not been convicted, was a very unusual feature of this case.

55. The question is however whether that particular issue in itself justifies an additional element of enhancement, and it does not in itself seem to have made the case materially more complex than any other disputed confiscation proceedings in which the Crown is pressing for a benefit figure of up to £500,000. It brought in an additional argument, in principle, as to whether the Crown was entitled to set the benefit figure in that way, and the Crown's efforts made the case more protracted, but all of that is reflected in the level of enhancement already allowed, as are the responsibility, novelty and despatch factors.

56. For those reasons, I agree with the Determining Officer's conclusions and this part of the appeal does not succeed.

Time Waiting for CVP Hearing

57. On 20 May 2021, a fee earner spent one hour 12 minutes waiting to join an abuse of process hearing by CVP link, only to find out that the hearing was not open to solicitors, only to counsel.

58. The Determining Officer disallowed this waiting time on the basis that is the fee earner was in the office, or other work could have been undertaken.

59. The Appellant argues that there is no real difference between waiting at Court and waiting in the office. Everyone has their laptops at Court with them and could work on other matters. If this deduction is correct (and it is only a minor part of the appeal) then solicitors would never be able to claim for waiting.

60. The Appellant makes a better argument for disallowing waiting time at court than for allowing waiting time in the Appellant's own office. Mr Goodwin suggested to me that the fee earner would have had to stand by and make active attempts to join the hearing, precluding any other work, but I do not find that very convincing in the context of a wait for one hour 12 minutes. After a short period of time, surely it would have seemed sensible to find something else to do whilst waiting. This part of the appeal does not succeed.

Attendance at Court with Counsel on 16 December 2019

61. The grade B fee earner with conduct of the case attended court with counsel on16 December 2019. The Determining Officer noted that on that date the case was listed for mention to review the POCA timetable. The Defendant and an interpreter attended. Counsel was requested to make an application for a further 8 weeks for the service of the s17 statement and a detailed brief to that effect was prepared.

62. The Determining Officer took the view that at court the responsibility for the conduct of a case, particularly where as in this instance a relatively routine application was to be made, shifts very considerably to counsel. As the Defendant was in attendance it was reasonable for a solicitor's representative to attend, but not the solicitor with conduct of the case. Any assistance required by counsel or the task of making a note of the directions of the court could have been reasonably provided by a grade C fee earner.

63. The Appellant argues that given the complexity of the case, it was appropriate and in fact necessary for the fee earner with conduct to be available to assist counsel. Given the complications attendant on the case, the instruction of a Grade C fee earner to attend the hearing would have been something of a false economy.

64. I agree. Whether it was strictly necessary for the grade B fee earner to attend court on 16 December 2019, given the unusual circumstances of this case it was reasonable. This part of the appeal succeeds.

The Disallowance of Time Spent in Discussion Between Fee Earners

65. The Appellant takes issue with the disallowance of time spent by the confiscation team, discussing the case with fee earners dealing with the new charge of evading duty. The Appellant argues that it was central to the case that the solicitors dealing with the confiscation matters were kept informed of the parallel issues in the duty evasion case. This was most efficiently achieved by speaking to the conducting fee earners. It could have been done by looking on the Case Management System and going through the documents on that system, but this would have taken longer and led to a higher claim.

66. The Determining Officer took the view that whilst it might be reasonable to allow discussion between fee earners, in this case it was a question merely of sharing information regarding future hearing dates and/or proceedings and the whereabouts of the defendant. The Determining Officer regarded such conversations as being part of the general management of the case and not eligible for remuneration on a separate basis.

67. I do not agree. Generally, on assessment, discussions between a firm's fee earners with regard to a single case may well be disallowed on the basis that such discussions are part and parcel of a solicitor's day-to-day work and fall within the solicitor's normal operating expenses, rather than being chargeable as a separate item. Here, however, there were two sets of proceedings against the Defendant, closely linked and of necessity conducted by different fee earners. If, as appears to have been the case, it was necessary for the confiscation team to liaise with the team responsible for defending the new duty evasion charges, then they should be remunerated for that work. Whether discussions might have encompassed mundane matters such as trial dates does not seem to me to be to the point. This part of the appeal succeeds.

The Disallowance of Short Attendance Notes

68. On the hearing of the appeal, Mr Goodwin of the Appellant firm explained to me that the Appellant must undergo regular peer reviews and submit the file for that purpose. It is essential that all time is fully and clearly recorded. If not, there is a risk of receiving a low rating which in turn may put the Appellant's Legal Aid contract at risk. For that reason, all time is meticulously recorded.

69. The Determining Officer, referring to *Brush v Bower Cotton & Bower* [1993] 1 WLR 1328 and "Greenslade on Costs", took the view that whilst attendance note covering substantial case preparation or conferences with counsel should be allowed as chargeable items the preparation of such short attendance notes detailing every item of work, telephone calls, etc undertaken on a claim, whilst providing a useful record, does not constitute reasonable preparation and as such should be disallowed.

70. Again, I have to disagree. It is part of a solicitor's professional duties to keep a proper record of work done. Whilst it may be that, for example, attendance notes of short telephone calls might be disallowed as separate items on the basis that they could have been prepared contemporaneously with the call, that consideration does not seem to have informed the Determining Officer's decision, and I doubt that a hastily handwritten note made during a telephone call would meet peer review standards. Bearing in mind what Mr Goodwin had to say about the importance of a full record, it seems to me that short attendance notes should not have been singled out for disallowance.

71. I cannot, from the materials before me, readily identify the items in question and it would be disproportionate to deal with the issue in anything other than a broad-brush basis. Given that the documents in question are short attendance notes, my conclusion is that they should be allowed as routine items.

Preparation of Memoranda in Support of Applications for Prior Authority

72. In addition to the time claimed for preparing applications for prior authority, time was claimed for the preparation of supporting memos in each case by the grade B fee earner. The Appellant argues that it is important, when applying for prior authority, to ensure that proper quotes are obtained, that the matter is explained properly to the LAA, which should be provided with a proper narrative. The time spent on doing this should not have been disallowed.

73. The Determining Officer accepted that to accompany an application for prior authority (form CRM4), a solicitor may complete an additional form providing further information to the assessor in support of their application, but concluded that whilst it may be reasonable to provide additional narrative where the expert to be instructed is unusual or the costs requested significantly higher than usual for the type of disbursement, such was not the case here. The applications for prior authority were in relation to the costs of instructing interpreters to accompany solicitors and counsel to conferences with the defendant and translate documents; costs regularly incurred in criminal proceedings. The time spent on the supporting memoranda was, accordingly, disallowed.

74. Judging from the Appellant's file, matters do not seem to have been quite as simple as the Determining Officer concluded. At one stage, prior authority was in fact rejected. There were difficulties in matching quoted fees with the LAA's requirements, and there was a degree of urgency involved in obtaining translation and interpretation services. It seems to me that in the circumstances it was appropriate to prepare a memorandum for the LAA to explain the particular facts of the case and the need for these services to meet the facts of the case. The time claimed should in principle be allowed, but the time spent overall does strike me as substantially in excess of anything that could properly be allowed on assessment. I will make an allowance for this time in the context of other timed attendances, discussed below.

Other Timed Items Allowed as Routine

75. The Determining Officer, where of the view that an email or letter sent was simple, straightforward and not substantial, has allowed such items as routine. Telephone calls characterised as routine have also been allowed as such, regardless of time actually recorded and claimed.

76. The Appellant's position is that all emails and telephone calls timed at 12 minutes or more should be allowed exactly as claimed. That is not, in my view, a sustainable position. I have never undertaken an assessment in which every timed item, if challenged, has been allowed as claimed. That is because, inevitably, some items of which a fee earner may have genuinely taken 12 or 18 minutes may, on an objective assessment, only justify allowance as routine items.

77. As for emails and letters, again I have not been able readily to identify the items in question, so I have no real basis upon which to judge whether I agree with the decisions actually made by the Determining Officer. I can observe that the Appellant's time recording is quite full and in the light of that, reductions of timed items to routine items are, on assessment, to be expected. Beyond that I can only say that the approach taken by the Determining Officer is in principle correct and in fact quite standard.

78. Having said that, I have noted that telephone calls treated by the Determining Officer as routine, include lengthy telephone calls in which the fee earner is kept waiting by the court or other agencies. In other words, what should have been routine communications, due to the exigencies of dealing with the court and other external agencies, were not. I do not think that it can be fair to allow such communications as "routine" if the fee earner was in fact obliged to spend the time claimed.

79. As with the preparation of memoranda in support of applications for prior authority, I have found that the file (meticulously recorded though it is) does not always appear to support the amounts of time claimed. My conclusion is that, doing the best I can on a necessarily broad-brush basis, I should allow the time claimed for timed telephone calls reduced by the Determining Officer to routine items, and for the preparation of memoranda of applications for prior authority, at 70% of the total claimed.

Summary of Conclusions

80. The appeal on enhancement fails, as does the appeal against the disallowance of time spent on 20 May 2021 waiting for the CVP hearing.

81. The attendance at Court on 16 December 2019 should be allowed at the Grade B rate appropriate to the fee earner who attended, not reduced to a Grade C rate.

82. The time claimed by the Appellant for discussions between the confiscation team and the fee earner or fee earners dealing with the new charges against the Defendant of duty evasion should be allowed in full.

83. Short attendance notes should be allowed as routine items, not disallowed entirely.

84. I do not have any sound basis for reviewing the Determining Officer's findings on timed letters and emails allowed as routine. Timed telephone calls which have been reduced by the Determining Officer to routine items should however be allowed at 70% of the time claimed. This 70% allowance also extends to the time claimed for preparing memoranda in support of applications for prior authority, disallowed by the Determining Officer.