



Neutral Citation No. [2023] EWHC 2724 (SCCO)

Case No: A20200069

SCCO Reference: SC-2023-CRI-000009

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 30th October 2023

Before:

COSTS JUDGE WHALAN

R

v

DYLAN WHITING

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

Appellants: G T Stewart Solicitors Ltd

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 £200 (plus any VAT payable), and the £100 paid on appeal, should accordingly be made to the Appellants.

COSTS JUDGE WHALAN

Introduction

1. GT Stewart Solicitors ('the Appellants') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in respect of a claim submitted under the Advocate's Graduated Fees Scheme ('AGFS'). The Appellants challenge the Respondent's decision to apply an out of time reduction of 20% for late submission of the claim.

Background

2. The Appellants represented Mr Dylan Whiting ('the Defendant') at Isleworth Crown Court. The Defendant appealed against a sentence of 26 weeks' imprisonment imposed by the Magistrates' Court. His appeal was dismissed on 18th September 2020, when the case concluded.
3. The AGFS claim was submitted 26 months later on 29th November 2022. Payment was made by the Respondent, but a late submissions penalty of 20% was applied, a deduction upheld on redetermination.

The Regulations

4. The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended in 2018, apply.
5. Regulation 4 requires that claims be submitted "*within three months of the conclusion of the proceedings*".
6. Regulation 31 then provides as follows:

31. Time Limit

- (1) *Subject to paragraph (2), the time limit within which any act is required or authorised to be done under this Order may, for good reason, be extended –*

- (a) *in the case of acts required or authorised to be done under regulations 29 or 30, by a Costs Judge or a High Court, as the case may be; and*
 - (b) *in the case of acts required or authorised to be done by a representative under any other article, by the appropriate officer.*
- (2) *Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate officer, a Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and must consider whether it is reasonable in the circumstances to reduce the fees payable to the representative under regulations 4, 5 or 6, provided that the fees must not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the fees should not be reduced.*

7. The Crown Court Guidance then sets out a 'sliding scale' of % deductions based on the degree of late submission:

Delay	Penalty
0-1 month late	0%
1-3 months	5%
3-9 months	10%
9-12 months	15%
12+ months	20%

8. During (and after) the Covid pandemic period, the Respondent applied an appropriate variation to this sliding scale, so that no penalty was applied to claims submitted up to 6 months late, a 5% penalty was applied to claims submitted between 6-12 months late, with the standard +20% penalty applied to claims submitted over 12 months out of time.

The submissions

9. The Respondent's case is set out in Written Reasons dated 3rd January 2023. No appearance was made at the appeal hearing on 1st September 2023. The Appellants' case is set out in Grounds of Appeal appended to the Notice of Appeal. Ms Krudy, solicitor, attended and made submissions at the hearing on 1st September 2023.

My analysis and conclusions

10. The Respondent, in summary, found that the Appellants demonstrated a 'good reason' for late submission, pursuant to reg. 31(1), applicable to 19th March 2021. No reason was particularised, but the context, evidently, was the Appellants' difficulties during the Covid pandemic. Further, the Determining Officer then found that the Appellants had demonstrated 'exceptional circumstances', pursuant to reg. 31(2), subject to a post-12-month delay deduction of 20%. Again, aside from referring to the Legal Aid Agency's general policy, no reasoning was particularised.
11. The Appellants, in summary, submit that GT Stewart operated efficiently and reasonably during the exceptional disruption caused by the Covid pandemic. The Appellants are a large, regional firm, conducting high volume (but often comparatively low value) business. Its annual turnover for 2021/22 for police station/Magistrates' Courts business was £1.398 million, with each claim valued at £180 to (at the very highest) about £2,000. The firm's GFS turnover over the same period was £1.8 million. No figures are available for the AGFS turnover, but the value of business was also considerable. The Appellants, in other words, incur the burden of submitting thousands of claims annually, a considerable administrative burden during the best of times. Like most businesses, the Appellants struggled understandably during the Covid pandemic, to the extent that they are still, even now, endeavouring to catch up. Ms Krudy submitted – and this is not gainsaid by anything advanced by the Respondent – that the Appellants are recognised as an efficient, well-run firm, who maintain an administration respected by the LAA. Ideally, the

Appellants submit that this AGFS claim should be allowed without deduction. The Appellants concede, however, that a late submission penalty may be applicable, but aver that it should properly be 5% and not the 20% applied.

12. The Respondents, in general terms, have applied an appropriate system fairly. The DO concluded properly that the Appellants had demonstrated a 'good reason' (31(1)) followed by 'exceptional circumstances' (31(2)). But the DO erred, in my conclusion, in relation to the period applicable to the 'good reason'. No specific reasoning was articulated for stopping the "good reason" period at 19th March 2021. The 'third lockdown' imposed on or about 4th January 2021, the culmination of a continuous series of restrictions starting on 20th March 2020, was relaxed progressively until sometime in July 2021, when, for practical purposes, the restrictions ceased. Any business of any size, however, would likely experience some form of ongoing disadvantage, at least for a reasonable period. The Appellants, I find, are a large, properly administered business, conducting high volume legal aid business, with consequently significant administrative burdens. Realistically, the post-Covid deficit would have been reasonably ongoing for some time after the formal Covid restrictions expired. Doing the best I can, on the facts of this case and applying necessarily a relatively broad-brush, I find that the 'good reason' extension should apply to the end of 2021, meaning that the 'exceptional circumstances' delay period would not start until the beginning of 2022. Insofar as this AGFS claim was submitted at the end of November 2022, the relevant period of delay falls within the 9-12 months bracket, meaning that, pursuant to the Respondent's reasonable policy, a 5% penalty should be applied.
13. I accordingly allow this appeal and direct that the Appellants' AGFS claim should be allowed subject to a late submission penalty of 5%.

Costs

14. The Appellants' appeal succeeded substantially and so I award costs of £200 (+ any VAT payable), along with the payment of the £100 paid on appeal.

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