



Neutral Citation No. [2023] EWHC 3128 (SCCO)

Case No: T20227031

SCCO Reference: SC-2023-CRI-000034

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

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

5 December 2023

**Before:**

**COSTS JUDGE ROWLEY**

**R**

**v**

**HORSFALL**

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

Appellant: IMS Law Limited (Solicitors)

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

The appropriate additional payment, to which should be added the sum of £750 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**COSTS JUDGE ROWLEY**

**Costs Judge Rowley:**

1. This is an appeal by IMS Law Limited solicitors against the decision of the determining officer not to allow a cracked trial fee in addition to a graduated fee under the Criminal Legal Aid (Remuneration) Regulations 2013 in circumstances where the appellant says that there were two separate indictments.
2. The solicitors were originally instructed on behalf of Vincent Horsfall under a representation order dated 3 September 2021 concerning an offence of possession of a firearm on 1 September 2021.
3. Mr MacDonald, who was the solicitor with conduct of the case on behalf of Horsfall, appeared on the appeal hearing before me. He expressed the view that the police had little option but to search the premises in which Horsfall and his then girlfriend Fiona Crooks were located on 1 September 2021 given the information the police had received. Although it was not clear to Mr McDonald at the time, it became apparent subsequently that Horsfall and others had been under surveillance by the police for some time. The existence of the firearm – a vintage 0.32 Colt Revolver – could not be ignored simply in order to ensure that the surveillance was not compromised.
4. The effect of the charging decision was that the conspiracy which the police suspected involving Horsfall, Crooks and others to obtain and then to sell weapons to criminals in the North West only led to charges being laid after the proceedings involving the possession of the Colt Revolver were already on foot. Those proceedings began in the magistrates' court and were sent to the Crown Court where a two count indictment was brought involving possession of the Colt Revolver and ammunition contrary to the Firearms Act 1968 ("the possession indictment"). Those proceedings were heard at a preliminary hearing in the Crown Court and a trial date in February 2022 was set.
5. Shortly prior to Christmas 2021, Mr MacDonald was called to attend the police station where Horsfall was being interviewed in respect of the surveillance evidence (which the police presumably considered was now complete). The interviews lasted several hours according to Mr MacDonald. The outcome was a three count indictment (later reduced to two) in respect of Horsfall (and Crooks). The offences were drafted as conspiracies and therefore contrary to section 1 of the Criminal Law Act 1977. They concerned possession of prohibited weapons for sale or transfer without authority and conspiracy to possess ammunition without a firearm certificate ("the conspiracy indictment"). The same sections of the Firearms Act were cited as for the possession indictment save reference to the purpose of the possession being for the sale or transfer of those weapons contrary to section 5(2A)(c). The period of the conspiracy was said to be between 20 April 2021 and 2 September 2021.
6. Mr MacDonald provided the draft opening note of prosecution counsel in respect of the conspiracy indictment. Paragraphs 7 to 10 of that draft note set out the prosecution case as follows:
  - “7. The Prosecution case against these two defendants is that they agreed between each other and with others involved in the drugs trade to supply them with firearms and ammunition.

8. There is no doubt that it is the defendant Horsfall who is the leader of this enterprise but the Prosecution say that the defendant Crooks also played her part in this Conspiracy by encouraging Horsfall to trade the firearms in order to make money so they could enjoy the trappings of a luxurious lifestyle.

9. The Prosecution say that Horsfall bought a 0.41 Colt firearm from a man called Richard Holden in Lancashire and later sold it on to a man called Mulligan a man heavily involved in the drugs trade in Manchester.

10. He [*Horsfall*] was in a relationship with Fiona Crooks and you will hear evidence of how the police found another firearm at 18 Wheatfield Close. This time the police also found and seized live ammunition which gives the lie to Mr Horsfall's claim that he thought he was dealing in antique guns and as such was not a prohibited firearm. [Issues to be refined once the Defence Statement served].”

7. The firearm referred to in paragraph 10 above is the 0.32 Colt Revolver seized by the Police on 1 September 2021 and is the substance of the possession indictment. Once the conspiracy indictment was up and running, the trial date for the possession indictment was vacated and, as Mr MacDonald described it, it appeared that no-one was entirely sure what to do with the possession indictment. It was eventually stayed by HHJ Woodfall KC on 17 June 2021 which was shortly before the trial of the conspiracy indictment began.
8. It is the stay of the possession indictment which is the foundation of this appeal. The solicitors have been paid their fee in respect of the conspiracy indictment. They say that their client faced two different “cases” as defined by the 2013 Regulations and so are entitled to two fees. The determining officer, supported by the submissions of Francesca Weisman of the LAA's Central Legal Team on the appeal, concluded that there had only been one case faced by Horsfall and so only the graduated fee for the conspiracy proceedings which reached a trial was payable.
9. There have been numerous appeals on the question of stayed indictments recently. Historically they were rare, but the use of the Digital Case System has led to a change in approach which, at first blush, entitles litigators to numerous payments for indictments which were uploaded onto the DCS but which were not the final version taken forward to trial.
10. A number of costs judge decisions have indicated that the mere existence of more than one indictment is not sufficient to justify more than one fee. If the plethora of indictments were essentially administrative or otherwise reflected very minor amendment in nature, then they could not be treated as if a new case was being put to the defendant. Mr MacDonald very fairly indicated that since the final (conspiracy) indictment was numbered B5, then four other indictments must have been stayed. But the changes between B1 and B5, even though they included the changing of some of the defendants, were not sufficient to suggest that a further case was being brought against the defendant and which would justify a second fee.

11. In my view, this case is rather different to the recent spate of appeals where it has been easier, technologically speaking, to upload a revised version of an indictment than formally to amend it with the result of numerous iterations being present on the DCS.
12. It is clear from the widely shared comment of the judge on 20 January 2022 following the hearing that the prosecution intended to apply to join the possession indictment to the conspiracy indictment and that such an application was not going to be opposed. If such joinder had occurred, then there would be no issue on this appeal because the joined indictment would only entitle the litigator to a single fee because only one “case” under the Regulations would exist.
13. At the time of severing the conspiracy indictment (so that the Manchester based co-conspirators could face trial in Manchester with their counts joined to an existing indictment) there is a further widely shared comment from the prosecution counsel on the morning of the hearing on 20 January 2022. The possession indictment against Horsfall is said to be “subsumed within the conspiracy counts he now faces” and so the Crown would seek to vacate the trial of that indictment so that Horsfall and Crooks could be tried together on the conspiracy indictment.
14. The description of the possession indictment being subsumed into the conspiracy indictment is, it seems to me, an accurate description of the prosecution’s approach here. As Mr MacDonald explained above, the need to bring the possession indictment was forced upon the police before it was ready to apprehend the defendants for questioning on the alleged conspiracy overall. If that had not occurred, then the seizing of the Colt Revolver and ammunition would, at most, have led to further counts on the conspiracy indictment. The widely shared comments similarly show the intention of regularising the proceedings by joining the two indictments and the indication by the defendants that they did not oppose that course of action.
15. If the joinder had occurred, then the solicitors would have to have accepted a single fee in accordance with the regulations. But this is not what actually happened and it is difficult to see that there are anything other than two freestanding indictments in this case. Indeed, the possession indictment was the only indictment for the first few months and so any work done during that period would have been solely for that case. This is very different from the administrative amendments made to an indictment in some of the other cases.
16. If, for whatever reason, the conspiracy indictment had been abandoned, or indeed tried but the defendants acquitted, there is nothing, as far as I can see, to prevent the stay of the possession indictment from being lifted and the indictment pursued. If the defendants had been convicted in the conspiracy indictment, the prospects of lifting the stay would be remote. But on an acquittal (or abandonment) Horsfall would have faced the prospect of a further trial to deal with the possession indictment. The specific evidence of seizing the gun and ammunition would support that prosecution regardless of whether it had formed part of the evidence in the conspiracy indictment.
17. The “swings and roundabouts” nature of the graduated schemes is referred to in numerous costs judges’ decisions. Joinder of the two indictments (and therefore fees) in this case would have been a swing which the solicitors would have to bear. Absent that joinder, it seems to me that the solicitors are entitled to enjoy the roundabout of

two fees for the two indictments, notwithstanding the fortuitous manner in which they came about.

18. Accordingly, the solicitors appeal succeeds and they are entitled to the appropriate fee together with the costs of the appeal that I have assessed.