



Neutral Citation No. [2023] EWHC 3156 (SCCO)

Case No: T20187034

SCCO Reference: SC-2023-CRI-000017

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 7 December 2023

Before:

COSTS JUDGE LEONARD

R

v

CHUKWUKA

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

Appellant: Imran Khan & Partners (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 (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 Bonaventure Chukwuka (“the Defendant”) in confiscation proceedings under the Proceeds of Crime Act 2002. 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.
2. Broadly speaking, paragraphs 26 to 29 provide for a Determining Officer to authorise remuneration for prescribed categories of work at prescribed rates (subject to provisions for enhancement or reduction in appropriate circumstances), limited to such work as appears to the Determining Officer to have been reasonably done.
3. There are two issues on this appeal. The first concerns the Determining Officer’s refusal to allow enhanced rates of payment for reviewing a particular part of the documentary evidence. The relevant provisions are at Paragraph 29:

“(1) Upon a determination the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate... 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.”
4. The second issue concerns the Determining Officer’s assessment of a reasonable amount of time to undertake the review of that documentary evidence.

The Background

5. I am grateful to the Appellant for the following summary of the case.
6. On 22 May 2019 the Appellant received instructions to act on behalf of the Defendant in confiscation proceedings in the Crown Court at St Albans.
7. On 25 March 2019, the Defendant had been convicted by a jury of conspiracy to commit fraud between 01 January 2014 and 15 May 2018 and conspiracy to launder money during the same period. He was sentenced on 8 May 2019. The Defendant was, at the time of his conviction and sentencing, represented by Shearman Bowen Solicitors. The Appellant was brought in to represent the Defendant in the subsequent confiscation proceedings.
8. The Defendant had been convicted of playing the leading role in a very substantial and complex international fraud and money laundering operation, in which he and others utilised malware to intercept electronic communications and to divert transferred funds from their legitimate destination. The fraudulently obtained funds were transferred to a web of “mule” accounts and from there to other accounts, so that the funds became untraceable.
9. The fraudulently obtained monies were laundered through the buying and exporting of baby milk to Nigeria. The Defendant was said to be masquerading as a foreign exchange trader to facilitate the movement of the fraudulently obtained monies. The hawala system was also used.
10. The Prosecution’s initial section 16 statement sought a benefit figure of £7,511,206.40, plus the value of property held (to be determined) and an available assets figure of £1,669,346.15, plus hidden assets up to the value of the benefit figure.
11. The Prosecution relied upon *R v Ahmad and another* [2014] UKSC 36 in inviting the Court to find that, property having been obtained as a result of a joint criminal enterprise, it would be appropriate for a court to hold that each of the conspirators “obtained” the whole of that property. The Prosecution acknowledged however that evidence utilised in the original fraud trial (upon which the Prosecution continued to rely) pointed, in places, to the specific division of fraud proceeds as between the co-defendants. It was left to the Defendant to avoid a joint benefit finding by drawing upon that evidence to persuade the court to find, in line with paragraph 49 of the Supreme Court’s judgment in *R v Ahmad and another*, that only a share of the fraudulently obtained funds had been acquired by the Defendant.
12. The page count for the confiscation proceedings on the Crown Court’s Digital Case System (“DCS”) approached 20,000, primarily volumes of telephone and banking evidence. Analysis of the telephone evidence demonstrated specific division of proceeds between the conspirators. Analysis of the banking evidence demonstrated that the Defendant did not receive all of the alleged benefit figure of £7,511,206.40, whether solely or jointly.
13. On the strength of that analysis the Appellant succeeded in persuading the Prosecution to concede the “criminal lifestyle” assumptions of section 10 of the 2002 Act; to

concede an allegation of hidden assets; and to reduce the benefit figure by more than £7 million. Following negotiation, an order for just over £550,000 was made against the Defendant.

The Decision Under Appeal

14. The Determining Officer recognised that this was an exceptionally complex and large-scale case (the original trial having lasted in the region of six months, involving 228 separate frauds of a total value of over £10 million and 122 separate “mule” accounts) and allowed the maximum enhancement of 100% upon appropriate categories of work. That is a decision with which I entirely agree.
15. The Determining Officer did not allow any enhancement upon work undertaken by a trainee solicitor on about 15,000 pages of exhibits and other miscellaneous items from the original prosecution, of which 9,537 pages comprised the exhibits adduced at trial and for which 292 hours’ work was claimed.
16. Payment for that work was assessed by the Determining Officer at the prescribed rates. Referring to the decision of this court in *R v Onwu* [2022] EWHC 1778 (SCCO), she allowed 120 hours of the claimed 292 hours’ work.
17. The Determining Officer observed that whilst the papers from the substantive prosecution had been voluminous, the Defendant’s guilt had been established following a lengthy trial. The role of the Appellant was to respond to the prosecution’s assertions regarding his benefit and available assets. Save for a number of routine tasks, the trainee solicitor who had undertaken the work took no other part in the preparation of the case, which was primarily undertaken by a senior fee earner.
18. The Determining Officer concluded, accordingly, that it was not reasonable for the Appellant to consider and schedule all of the papers from the substantive hearing in such depth. The time she had allowed for that task was in her view reasonable to enable the Appellant to become familiar with the circumstances of the case and to properly deal with the questions of benefit and realisable assets on behalf of the Defendant.
19. As the work undertaken was little more than scheduling, a routine task properly delegated to a trainee solicitor, the task itself was, the Determining Officer found, not affected by the weight or complexity of the case as a whole. Nor was an exceptional degree of responsibility accepted by the trainee solicitor.

Conclusions

20. Mr O’Donnell for the Appellant advises me, and I accept, that the work undertaken by the trainee solicitor on the original trial documentation was not scheduling but the analysis of evidence that was already organised in workable form on the DCS. The point of the analysis (which might have been, but was not, outsourced to a forensic accountant at greater expense) was to identify the evidence which the Defendant needed to demonstrate the division of funds among conspirators and the actual benefit to the Defendant. In doing so the Appellant enabled the Defendant to avoid a “joint benefit” finding of over £7.5 million and created the foundation for an agreed order at

a fraction of that figure.

21. Bearing that in mind, I accept that the Determining Officer's decision does not attach sufficient weight to the importance of the evidence from the original fraud trial.
22. Nor does it follow, from the fact that the review of that evidence was undertaken by a trainee solicitor, that the work undertaken was not important, complex, or difficult. The criteria for enhancement do not vary according to the grade of fee earner concerned, and the Appellant should not be penalised for the appropriate delegation of work to a junior fee earner. The review of the evidence from the original trial seems to me to have shared the elements of scale, complexity and responsibility that justified an enhancement of 100% on the rates allowed for other work. A 100% enhancement should, accordingly, be allowed on this work as well.
23. As the time spent, it seems to me that this case is quite different from *R v Onwu*, in which I shared the Determining Officer's conclusion that time had been spent on material that had little or no bearing upon the confiscation case against that defendant.
24. In this case, the Prosecution confirmed (as the section 16 statement and other documents I have seen show) that the evidence from the original trial incorporated information that was of central importance to the Defendant's case in the confiscation proceedings. As such, they required proper examination.
25. On that basis it seems to me that the time claimed by the Appellant for the review of that very large body of documentation is reasonable and should be allowed at the 292 hours claimed.
26. For those reasons, this appeal succeeds in full.