



Neutral Citation No. [2024] EWHC 1979 (SCCO)

Case No: T2021 7458

SCCO Reference: SC-2024-CRI-000055

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 29 July 2024

Before:

COSTS JUDGE Brown

IN THE MATTER OF:

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

ASHCOTTS SOLICITORS

Appellants

-and-

THE LORD CHANCELLOR

Respondent

The appeal has been successful to the extent that the Applicant has accepted an increased PPE count offered by the Respondent. It has otherwise been unsuccessful.

REASONS FOR DECISION

1. There appeared initially to be two issues in this appeal arising in respect of the Graduated Fee Scheme (under the Criminal Legal Aid (Remuneration) Regulations 2013). The first issue was whether the claim should have been dealt with as a 'Before trial transfer – trial (new litigator)' as provided for under the Table to Regulation 13 in Schedule 2 of the 2013 Regulations (which provides for 100% of a "full fee") or, if, as has been allowed, a 'Transfer before retrial (new litigator)' fee. (which provides for 50% of a "full fee"). The second issue was as to the allowance of the number of pages of prosecution evidence ('PPE').

2. At the hearing on 4 July 2024 the Appellants were represented by counsel Mr Montgomery; the Defendants were represented by Ms Quarshie, an employed barrister.

3. At that hearing the Appellant argued what seemed to me to be a new point which was that that in the course of the Defendant's instruction there was a new "case" so that further fees were payable.

4. Despite directions having been sent out, I did not receive any written case on the second issue (the PPE issue), as might have been anticipated under the directions. Although I indicated that I would be willing to adjourn this issue, at the hearing the Appellant withdrew this element of the appeal on the basis that they would have the benefit of the some concessions made by the Respondent.

Background

5. The Defendant, Zara Jamadar, faced trial on an indictment which contained two counts of conspiracies to supply class B drugs (cannabis and spice), two counts of Conspiracy to supply class A drugs (crack cocaine) (heroin); and a fifth count of Possessing criminal property (cash). He pleaded not guilty to these counts at the plea and trial preparation hearing (PTPH) on 4 October 2021. The trial started before Her Honour Judge Lloyd on 15 May 2023, but had to be stopped after three days due to the original defence team withdrawing on the grounds of professional embarrassment. Legal aid was in effect transferred to the Appellants in court on 17 May 2023 (I would assume by the grant of fresh Representation Order to the Appellants), and the trial was relisted in November 2023.

6. At some point before the second trial an additional charge was raised against the Defendant of being concerned in the supply of class A drugs. Mr. Montgomery says this occurred by the staying of an old indictment and the preferring of a new indictment with this additional charge as a further count.

7. I understand that at a hearing on 23 October 2023 the Defendant pleaded guilty to the first two counts, but the prosecution proceeded on other counts. The relisted trial started on 13 November 2023, and concluded on 16 November when the defendant pleaded guilty to the added count 6. This together with the guilty pleas already entered, was acceptable to the prosecution. The Defendant was sentenced on 14 February 2024 to 5 years 4 months imprisonment.

8. The Appellants were concerned that they were not allowed the correct fee asserting, as I understand it, that the Respondent has refused to pay this claim as a "new trial". Reference has been made in the appeal to a note of counsel which indicated that the matter was raised before the judge on the second trial in which counsel wrote: "*Judge was emphatic that it was a fresh trial. Inconceivable that anyone at the LAA would think otherwise.*" There is a written communication to similar effect from the same judge.

9. Before turning the specific issues that arise, it is important to note that it is not said by the Respondent there was one continuous trial. It appears that the Appellants were concerned that the Respondents have not acknowledged that there were two separate trials. It is as I see it common ground that there were two trials. There was a different judge, different counsel and a different litigator representing the Defendant at the second trial. The issue is not whether there were two trials. As Costs Judge Rowley commented in *R v Khan* [2022] EWHC 1274 (SCCO) regrettably when judges speak of there being a new trial solicitors interpret this as being an entitlement to a full trial fee. As the rules make clear (and I have set them out below) just because there are two trials it does not mean that a full fee is payable for the second trial.

One or two cases?

10. Schedule 2 of the 2013 Regulations sets the remuneration to be paid to a litigator under the Graduated Fee scheme. The Schedule applies to "every case on indictment" [para. 2]. Fees are paid per case; thus where there are two cases, the litigators (the solicitors) would be entitled to two separate fees. Schedule 2, also provides the following definition of 'case':-

"1.—(1) *In this Schedule—*

"case" means proceedings in the Crown Court against any one assisted person—

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

11. The question as to whether there is a new case is a different one from the question as to whether there was a new or fresh trial. If the Appellants were instructed on a new case then there would as I understand be entitlement to full fee for that new case. However it is plain to me that there was no new case here. Even if it were right that the fresh count were introduced by a process of staying an indictment and preferring a fresh indictment, it does not follow that there is a new case for the purposes of the Regulations. Whilst it seems to me that Mr. Montgomery may well also be right to say that the addition of the new count did add something in substance and indeed may have given rise to a wider factual enquiry, it does not follow from this either that there was a new case. The mere addition of a new count by a process of staying an old indictment and preferring a new one in order to achieve an amendment of this sort does not, in my judgment, give rise to a new case for the purposes of the Regulation. My reasons for this view are set out in *R. v Mohamed (Sohidul)* [2024] EWHC 308 (SCCO) and the preceding cases referred to in that decision; it is not necessary for me to rehearse them. I am not sure that Mr. Montgomery really made a determined effort to persuade me to take a different approach from the one I had taken in *Mohamed*, nor was I persuaded that I should do so. In this case the allegations after amendment of the indictment were not so substantially different in nature to the allegations before it that it could be regarded as a new case (see [21] of *Mohamed*). It seems to me it would be clearly wrong for a new fee to be payable for a new

case. Presumably it would mean that if the amendment were made after transfer, the Appellants would be entitled to two fees one for before the addition of the new charge and one for before.

Before trial transfer – trial (new litigator) fee ?

12. Schedule 2 of the 2013 Regulations provides as follows:

Retrials and Transfers

13.—(1) *Where following a trial an order is made for a retrial and the same litigator acts for the assisted person at both trials the fee payable to that litigator is—*

(a) in respect of the first trial, a fee calculated in accordance with the provisions of this Schedule; and

(b) in respect of the retrial, 25% of the fee, as appropriate to the circumstances of the retrial, in accordance with the provisions of this Schedule.

(2) *Where—*

(a) a case is transferred to a new litigator; or

(b) a retrial is ordered and a new litigator acts for the assisted person at the retrial, the fee payable to the original litigator and the new litigator is a percentage of the total fee, calculated in accordance with the table following this paragraph, as appropriate to the circumstances and timing of the retrial, transfer or withdrawal of the section 16 determination.

(3) *In sub-paragraph (2), “transfer” includes the making of a section 16 determination in favour of an individual who, immediately before the making of the section 16 determination—*

(a) had represented themselves; or

(b) had been represented (otherwise than pursuant to a section 16 determination) by the litigator named in the order,

and for the purposes of that sub-paragraph the litigator is to be treated as a new litigator.

....

13. The Table referred to sub regulation (2) above is as follows (my italics):

Retrials and Transfers

Scenario	Percentage of the total fee	Case type to be used to determine total fee	Claim period

Cracked trial before retrial, where there is no change of litigator	25%	Cracked trial	
Retrial where there is no change of litigator	25%	Trial	
[Transfer at or before the first hearing at which the assisted person enters a plea] ⁴ (original litigator)	25%	Cracked trial	
[Transfer at or before the first hearing at which the assisted person enters a plea] ⁴ – guilty plea (new litigator)	100%	Guilty plea	
[Transfer at or before the first hearing at which the assisted person enters a plea] ⁴ – cracked trial (new litigator)	100%	Cracked trial	
[Transfer at or before the first hearing at which the assisted person enters a plea] ⁴ – trial (new litigator)	100%	Trial	
Before trial transfer (original litigator)	75%	Cracked trial	
Before trial transfer – cracked trial (new litigator)	100%	Cracked trial	
<i>Before trial transfer – trial (new litigator)</i>	<i>100%</i>	<i>Trial</i>	
During trial transfer (original litigator)	100%	Trial	Claim up to and including the day before the transfer
During trial transfer (new litigator)	50%	Trial	Claim for the full trial length
Transfer after trial or guilty plea and before sentencing hearing (original litigator)	100%	Trial, Cracked trial or Guilty plea as appropriate	Claim for the full trial length, excluding the length of the sentencing hearing
Transfer after trial or guilty plea and before sentencing hearing (new litigator)	10%	Trial	Claim for one day or for the length of the sentencing hearing if longer than one day
Transfer before retrial (original litigator)	25%	Cracked trial	
<i>Transfer before cracked retrial (new litigator)</i>	<i>50%</i>	<i>Cracked trial</i>	
Transfer before retrial (new litigator)	50%	Trial	Claim for the full retrial length

Transfer during retrial (original litigator)	25%	Trial	Claim up to and including the day before the transfer
Transfer during retrial (new litigator)	50%	Trial	Claim for the full retrial length
Transfer after retrial or cracked retrial and before sentencing hearing (original litigator)	25%	Trial or Cracked trial as appropriate	Claim for the full retrial length, excluding the length of the sentencing hearing
Transfer after retrial or cracked retrial and before sentencing hearing (new litigator)	10%	Trial	Claim for one day or for the length of the sentencing hearing if longer than one day.

14. Mr. Montgomery argued that as matter of statutory interpretation it was possible to accommodate the conclusion that in the case the Appellants were entitled to 100% of the fee on the basis that the second trial was a new “trial” and not a “retrial”. Because of the change in judge, jury, solicitors, counsel, a new indictment, it would- he says- be inaccurate to describe the situation (and entitlement to fees) as resulting from a transfer before “retrial”.

15. It seems to me however to be clear that the term ‘retrial’ covers the situation here, even though there was, as here, a new trial. The descriptions set out in the Table are derived from the provisions of Regulations 13 (1 and (2) which make it clear that in any one case there may a trial followed by a retrial. The first trial in this case was the “trial” and, and at the risk of stating the obvious, the second trial must have been “retrial” for these purposes. In circumstance where there was a transfer to a new litigator it must follow that the second trial after transfer was a retrial. There was nothing particularly unusual in a retrial taking place before a different judge and with different counsel; the fact that a litigator may change under this scenario is plainly envisaged by the rules. It seems to me that the Table, read more generally, only really makes sense if this is the right construction of ‘trial’ and “retrial’ even if these terms are not expressly defined.

16. I fully understand that in this case there may have been more work than might have been normal for a retrial because as I understand none (or very little) of the papers held by the first litigator were transferred over to the Appellant. It is said that the Appellant had to start from ‘scratch’. But I do not think this matter can affect the interpretation of the Regulations where they are clear. There plainly is a basis for thinking that even where there is retrial after transfer to a new litigator it could involve less work than the original trial.

Costs of the appeal

17. Some success has been achieved in this appeal but not on the points in issue at the hearing. I propose allowing a fee of £175 by way of contribution the Appellant’s costs to reflect the partial success. If either party disagree with this then they should email their submission to me within 7 days of receipt of this decision. But in the absence of any further submissions this should stand as my decision on the issue of costs of the appeal.

COSTS JUDGE BROWN