



Neutral Citation No. [2024] EWHC 3269 (SCCO)

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T20197303 T20197511 T20207305

SCCO Reference: SC-2024-CRI-000066

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

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

Date: 16/12/2024

**Before:**

**COSTS JUDGE LEONARD**

**R**

**v**

**DANSON**

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

Appellant: **Sarah Vine KC (Counsel)**

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

The appropriate additional payment, to which should be added the sum of £450 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE LEONARD

1. This appeal concerns a claim for payment under Schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013. The relevant Representation Order was made on 20 March 2019, and the 2013 Regulations apply as in force on that date (subject to some retrospective amendments made the Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022).
2. Defence advocates such as the Appellant are paid for their work by reference to the Graduated Fee provisions of Schedule 1. The Graduated Fee due is calculated, along with other factors, by reference to the number of served Pages of Prosecution Evidence (“PPE”). The PPE count is subject to a cap, but it is open to advocates, in addition to the Graduated fee calculated by reference to the PPE count, to claim an additional payment for “special preparation.”
3. The definition of “pages of prosecution evidence” (“PPE”) is to be found at paragraph 1, subparagraphs (2)-(5) of Schedule 1:

(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with subparagraphs (3) to (5).

(3) The number of pages of prosecution evidence includes all—

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants,

which form part of the served prosecution documents or which are included in any notice of additional evidence.

(4) Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(5) A documentary or pictorial exhibit which—

- (a) has been served by the prosecution in electronic form; and
- (b) has never existed in paper form,

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking into account the nature of the document and any other relevant circumstances.”

4. The special preparation provisions are to be found at paragraph 17 of Schedule 1. Insofar as pertinent for the purposes of this appeal, they read as follows:

**“17.— Fees for special preparation**

(1) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable...

... (b) the number of pages of prosecution evidence, as defined and determined in accordance with paragraph 1(2) to (5), exceeds...

...(ii) in cases falling within bands 9.1 to 9.7 (drugs offences), 15,000...

...and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule.

(2) Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee...

(3) The amount of the special preparation fee must be calculated... where sub-paragraph (1)(b) applies, from the number of hours which the appropriate officer considers reasonable to read the excess pages... using the hourly fee rates set out in the table following paragraph 24...

(5) A trial advocate claiming a special preparation fee must supply such information and documents as may be required by the appropriate officer in support of the claim.

(6) In determining a claim under this paragraph, the appropriate officer must take into account all the relevant circumstances of the case, including, where special preparation work has been undertaken by more than one advocate, the benefit of such work to the trial advocate.”

5. The subject of this appeal is a claim for special preparation, claimed by the Appellant at 396 hours and allowed by the Legal Aid Agency’s Determining Officer, at 236 hours.

### **The Background and the Served Evidence**

6. The Appellant represented Jodie Danson (“the Defendant”) in the Crown Court at Nottingham. The Defendant was indicted on one count of Conspiring to Transfer Prohibited Weapons and one count of Conspiring to Supply Class A Drugs. The Appellant describes the allegations themselves as relatively straightforward, but explains that the evidential matrix was “very large, complex and unwieldy.”
7. The first trial in 2020 (in which the Appellant was not instructed) collapsed because of the Covid-19 pandemic. A second trial started on 27 September 2021 (in which the Appellant was instructed) but was halted because it was overrunning. A third trial starting on 12 January 2023 ended with the jury being discharged on 13 June 2023, because they could not agree on their verdicts. The Appellant returned the brief after the third trial.
8. The Crown’s case against the Defendant was that he had been the head of an organised crime group (OCG) based in the Northwest, specifically the Salford district of Greater Manchester. He was a friend of a Nottingham based OCG member, Craig Moran, who had pleaded guilty to both the counts on which the Defendant was indicted. It is alleged that Mr. Danson supplied, via a courier, the firearms and class A drugs that Craig Moran had under his control during the indictment period (between 2017 and 2019).

9. The non-electronic PPE served by the Crown came to 28,501 pages. Additional served electronic evidence fell mainly into two categories. The first was the evidence downloaded from, or relating to, telephones and other electronic storage devices. The second was the product of a covert monitoring post planted in Craig Moran's vehicle over the course of four months and producing over 500 hours of material.
10. Such was the volume of each category of evidence that the Representation Order was extended on 27th January 2020 to cover the instruction of two junior counsel. Public funding was also granted for a communications expert, Mr. Stuart Banks, to analyse the digital data. The Appellant was instructed as leading junior on 8 January 2021.
11. The Appellant and her second junior, Matthew Howarth, had access to the raw data and during the course of the two trials in which they were jointly instructed, had reason periodically to check it. That was because there were occasions when it was not entirely clear whether there was any case for asking Mr. Banks for further investigation, cross referencing or evidence. Time spent on that raw data is not included in the special preparation claim that is the subject of this appeal.

### **The Special Preparation Claim**

12. Most, but not all, of the special preparation time actually undertaken by the Appellant was spent on the examination and re-examination of multiple schedules produced by Mr. Banks from the served electronic evidence. She has however confined her claim to the time spent by her on those schedules. They fall into three bundles. The first represents the pre-trial and inter-trial investigations by Mr. Banks and comprises 23,089 pages. The second represents investigations during the 2021 trial and comprises 1,111 pages. The third represents investigations during the 2021 trial and runs to 2188 pages. Excluding explanatory statements from Mr. Banks, the total pages of schedules and documents created from the raw phone data served by the Crown amounts to 26,222 pages.
13. Work on the schedules during the trials was, says the Appellant, constant, as issues emerged from cross-referencing between schedules and the Crown's trial evidence (principally a "Sequence of Events" of over 3,000 pages) that made the production of further schedules, some expanded, some refined, necessary to establish with precision the strengths and weaknesses of points counsel for the Defence were to pursue.
14. The case involved not only about twelve defendants but around fifty 'shadow conspirators,' clearly playing important roles in the narrative. The great majority of those individuals were people with criminal convictions, connections to more than one defendant and to other criminals who were potential candidates for the role ascribed by the Crown to Mr. Danson, who was alleged to be at the heart of the Manchester OCG. An in depth understanding of the electronic material was vital for the proper conduct of his defence.
15. None of the special preparation time claimed by the Appellant is, however, for the actual preparation of schedules or for rescheduling the documentation produced by Mr Banks. Nor has any time been claimed for cross-referencing.

## **Determination and Re-Determination**

16. On 21st September 2023, the Determining Officer authorised payment for 80 hours of special preparation. The Appellant requested a redetermination of the claim. On 11th October 2023, that request was refused, but payment for a further 76 hours was authorised. On 23<sup>rd</sup> November 2023, the Appellant requested written reasons for the refusal. On 9th January 2024, written reasons were provided, with authorisation for payment of a further 80 hours of work. The claimed, unpaid balance of 160 hours is the subject of this appeal.
17. The Determining Officer took the view that a claim for special preparation can, in accordance with the provisions of the 2013 Regulations to which I have referred, only be made for time reasonably taken to read pages of PPE in excess of the PPE “cap” (in this case, of 15,000 pages). Whilst the schedules produced by Mr Banks for the telephone data served by the Crown were helpful to the Defence in enabling the consideration of the material in a more meaningful way, they could not be counted as pages of PPE because they were defence generated material. For that reason the Determining Officer concluded that the worklog submitted by the Appellant, recording as it did time spent on defence generated material, was of no assistance in determining the special preparation claim.
18. Recognising however that PPE in excess of the 15,000 page limit had served, the Determining Officer made a decision to allow a PPE claim for the number of hours which she considered would be reasonable to read the excess pages. She identified 18,501 non-electronic pages in excess of the PPE “cap”, for which 160 hours were allowed. This, I think, must have been an error: the correct figure would be  $(28,501 - 15,000) = 13,501$  pages.
19. The Determining Officer then sought to arrive at a page count for the electronically served evidence, undertaking a review and applying criteria such as whether the data was sufficiently relevant to be included in the PPE count (as to which see *Lord Chancellor v SVS Solicitors* [2017] EWHC 1045 (QB)), the time it would take to review some of the less relevant material and the appropriate use of electronic searching methods. On this basis she allowed a further 76 hours, bringing the total to 236.

## **Conclusions**

20. I do not find it necessary to repeat here the Appellant’s submissions. It will be evident from my conclusions that I have accepted most or all of them.
21. I am unable to accept the Determining Officer’s distinction between the raw electronic data served by the Crown, for which she allowed 76 hours’ special preparation, and the schedules produced by Mr Banks. That distinction seems to me to be more hypothetical than real, given that (on the evidence I have seen) Mr Banks’ schedules represented a distilled, better organised version of precisely the same data, with irrelevant material such as metadata having been removed. To my mind the distinction rests upon an over-literal reading of the 2013 Regulations, which for the reasons I am about to give, seem to me to merit a more purposive interpretation.

22. I appreciate that the Determining Officer was trying to find a fair way to assess a claim which in her view had been based on the wrong body of work. The difficulty with her methodology was however that she had to base her assessment on an entirely hypothetical exercise in which the Appellant would have gone about the same work in a much less efficient way than she actually did: it made much more sense for the Appellant to work from Mr Banks' schedules than to try to replicate the editorial work he had already applied to the body of raw data served by the Crown.
23. I find it difficult to see how a body of electronic data reduced by an expert to 26,222 pages of the most relevant evidence could, in the circumstances of this case, be reviewed adequately in 76 hours. Electronic searching and filtering methods were not going to offer any obvious assistance in the consideration of evidence that had already been distilled down to what was relevant. Given that the Appellant was, in effect, reviewing the served electronic evidence it follows that the Determining Officer was mistaken in declining to consider the worklog she produced in support of her claim.
24. Having reviewed the worklog myself (and whilst the time entries, in whole hours, seem rather broadly recorded) it comprises a careful record of exactly what evidence was been considered on a day by day basis, and as such offers firm support for the Appellant's claim.
25. I fully appreciate that special preparation claims (based as they must be upon time reasonably spent) are not based on a time unit per page. Calculating the minutes claimed per page can, nonetheless, offer a useful cross-check and put such claims in perspective. In this instance, the Appellant's special preparation claim comes to just over one minute per page for the consideration of a body of data, all of which (having been edited by an expert) will have been sufficiently pertinent to justify inclusion in the PPE count.
26. That does not seem unreasonable, not least where it excludes entirely any allowance for the 13,501 pages of non-electronic served evidence in excess of the PPE "cap".
27. For those reasons, this appeal succeeds in full.