



Neutral Citation No. [2024] EWHC 775 (SCCO)

Case No: T20180706

SCCO Reference: SC-2023-CRI-000085

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 4th April 2024

Before:

COSTS JUDGE WHALAN

R

v

VIVEK GUPTA

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

Appellants: Imran Khan and Partners Solicitors

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

The appropriate additional payment, to which should be added the £100 paid on appeal, and assessed costs of £150.00 (+ any VAT payable), should accordingly be made to the Appellants.

COSTS JUDGE WHALAN

Introduction

1. Imran Khan & Partners Solicitors ('the Appellants') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in a claim submitted under the Litigator's Graduated Fees Scheme ('LGFS'). The issue for determination concerns the prescribed fee rate allocated to two fee earners at the Appellants, namely Paul O'Donnell, claimed at grade A but allowed at B, and Ghislaine Sandoval, claimed at grade B but allowed at C.

Background

2. The Appellants represented Mr Vivek Dupta ('the Defendant'), who was charged at Inner London Crown Court on an indictment alleging fraud and money laundering offences. The Defendant entered acceptable guilty pleas on 21st February 2019. The prosecution alleged that the Defendant had attempted to launder £7,755,501.89 and had actually succeeded in laundering £3,666,321.65. It was alleged that approximately one hundred bank accounts were involved in the commission of the offence, some of which were held in the name of limited companies and all of which were controlled or operated by the Defendant, including accounts outside of the UK.
3. Initially a Newton hearing was listed to determine the extent of the Defendant's benefit. On about 18th December 2019, however, the parties agreed that the Defendant should be sentenced on the basis of laundering or attempting to launder £1,000,000. On 17th January 2020, the Defendant was sentenced to 5½ years' imprisonment.
4. Proceedings pursuant to the Proceeds of Crime Act 2002 then commenced. The prosecution's s.16 statement was served on or about 22nd June 2020. The POCA proceedings concluded in about April 2023.

5. Ms Ghislaine Sandoval ('GS') was admitted as a solicitor on 23rd February 2022. Her involvement in this case began on 2nd March and ended on 21st April 2020. Mr Paul O'Donnell ('PO') was admitted as a solicitor on 16th March 2015. His involvement began on 25th February 2020, and he had conduct of the case until its conclusion on 24th April 2023.

The Regulations

6. The relevant Representation Order is dated 24th February 2020 and so The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended, apply.
7. Part 6 of Schedule 2 of the 2013 Regulations provide (where relevant) as follows:

26(3) The appropriate officer must consider the claim, any further particulars, information or documents submitted by the litigator under regulation 5 and any other relevant information and must allow such work as appears to him to have been reasonably done in the proceedings.

...

(5) The appropriate officer must allow fees in accordance with paragraphs 27 to 29 as appropriate to such of the following grades a fee earner as the appropriate officer considers reasonable –

(a) senior solicitor;

(b) solicitor, legal executive or fee earner of equivalent experience; or

(c) trainee or fee earner of equivalent experience.

The "grades" are defined within the Regulations as:

"senior solicitors" means a solicitor who, in the judgement of the appropriate officer, has the skill, knowledge and experience to deal with the most difficult and complex cases;

"solicitor, legal executive or fee earner of equivalent experience" means a solicitor, Fellow of the Institute of Legal Executives or equivalent senior fee earner who, in the judgement of the appropriate officer, has good knowledge and experience of the conduct of criminal cases;

"trainee solicitor or fee earner of equivalent experience" means a trainee solicitor or other fee earner who is not a Fellow of the Institute of Legal

Executives, who, in the judgement of the appropriate officer, carries out the routine work on a case; ...

It is the practise of the Respondent to allow a grade C for any fee earner who does not meet the criteria for either A or B, provided that the work they are claiming is fee earner work.

The submissions

8. The Respondent's case is set out in Written Reasons dated 7th September 2023. The Appellants' case is set out in typed Grounds of Appeal submitted on 11th September 2023. Mr O'Donnell attended and made oral submissions at the appeal hearing on 8th March 2024. No appearance was made by the Respondent.

My analysis and conclusions

9. The Respondent, in summary, relies on a strict application of the 'post qualification experience' criteria. Mr O'Donnell claimed as a grade A, but only had 5 years pq experience when his involvement in this case began, and he did not have 8 years pqe until March 2023, just before the conclusion of this case. Ms Sandoval, claimed as a grade B but allowed as a C, did not qualify as a solicitor until February 2022, several years after her (fairly brief) involvement in this case.
10. The Appellants, in summary, rely on a more practical, flexible interpretation of 'senior solicitor' and 'solicitor, legal executive or fee earner of equivalent experience'.
11. Mr O'Donnell ('PO') had 5 years' relevant experience when he began work on this case in February 2020. He is experienced in PoCA work and Asset Forfeiture and, from 2022, he has been recommended in this category in Chambers and Partner's Guide. He points out that the 2022 guide was published in October 2021, based on submissions lodged by February 2021, relating to work undertaken during the previous 12 months (i.e. from February 2020). This professional recommendation, in other words, relates specifically to a period which began at the same time as his involvement in this case. He is regularly assessed and allowed as a grade A by the Respondent in other similar cases. He adduced evidence of a legal aid claim in R.v. Chuwuka. This was another fraud and money laundering case that ran between June

2019 (it pre-dates, in other words, this claim) and October 2022. It involved alleged money laundering of £10m using up to 165 accounts. Mr O'Donnell was allowed by the LAA as a grade A.

12. Ms Sandoval (GS) initially qualified as a Barrister, completing the BPTC in 2017. She then undertook a 6-month internship at 9 King's Bench Walk, a set of chambers with a substantial criminal practice. She then joined the Appellants in March 2018 to undertake criminal work. She ultimately re-qualified as a solicitor, but had significant, relevant experience prior to becoming a solicitor. GS is also regularly assessed as a grade B by the LAA. She was also involved in R v. Chuwuka, where she was allowed as a grade B. In R v. Lambie [2021] SCCO Ref: SC-2021-CRI-000071, CJ Leonard looked at Ms Sandoval's criminal experience, and concluded (at para. 16) that 'it seems to me that by February 2021 she merited characterisation as a grade B fee earner'. (The reference to February 2021 relates to the specific facts of that case and does not purport to be a general assessment of her seniority.)
13. It is clear to me that the fee earner characterisation outlined in the 2013 Regulations operates in a slightly different way from a similar classification set out in the Guideline Hourly Rates ('GHR'), operative from 2001. The latter invokes a grade A-D structure, whereas the LAA classification only acknowledges grades A-C. Under the GHR, an individual's post-qualification experience tends to be determinative, so that grade A is limited to fee earners with more than 8 years' pqe, while B applies to those with more than 4 years' pqe. Even then, however, it is apparent that pqe is not determinative. In Paturel v. Marble Arch Services Limited [2005] EWHC 1055 (QB), Cox J noted (at para 10) that relevant professional qualifications were 'not binding instruments' and that overall 'litigation experience', including that accrued prior to the qualification, 'would always be recognised and taken into account when determining the appropriate grade of fee earner and hourly rate'. Under the 2013 Regulations, an even more flexible, holistic approach applies necessarily.
14. I am satisfied, on the particular facts of this case, that PO should be assessed and paid as a grade A and that GS should similarly be assessed as a grade B. He satisfies the 'senior solicitor' criteria, she qualifies as a 'solicitor, legal executive or fee earner of equivalent experience'. Both have been regularly assessed and allowed at these grades by the LAA, and whereas this is not binding on the Determining Officer, it

constitutes a reasonable indication of practical seniority. Another Costs Judge has assessed GS as a grade B from February 2021, a period that was just 10/11 months after her involvement in this case. Given her relevant, pre-qualification experience, I am satisfied that this classification can also apply to the period March/April 2020. This appeal is, for these reasons, allowed.

Costs

15. I award Appellants' costs of £150 (+ any VAT payable) along with the £100 paid on lodging the appeal.

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please address letters to the Criminal Clerk and quote the SCCO number.