



SENIOR COURTS
COSTS OFFICE

Dated: 20 September 2019

SCCO Ref 168/18

ON APPEAL FROM REDETERMINATION

REGINA v YORK

COURT OF CRIMINAL APPEAL

REGULATION 28(8) OF THE CRIMINAL LEGAL AID (REMUNERATION)
REGULATIONS 2013

CASE NO: 2017000089 A4

LEGAL AID AGENCY

DATE OF REASONS: 22 AUGUST 2018

DATE OF NOTICE OF APPEAL: 12 SEPTEMBER 2018 (RECEIVED)

APPLICANT: COUNSEL:
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The appeal has been successful for the reasons set out below. Costs awarded as set out in the final paragraph.

**COSTS JUDGE
JENNIFER JAMES**

REASONS FOR DECISION

1. Mr Newton of Counsel appeals against the decision of the Determining Officer in the Criminal Appeal Office of the RCJ (Costs Section) to pay his Brief Fee to include drafting Grounds of Appeal and attending a half-day Hearing at a reduced figure of £1,050.00 excluding VAT instead of £2,400.00 excluding VAT as claimed.
2. I must begin by apologising to both parties for the length of time this has taken. The Appeal came in just over a year ago; it was not listed until 11 January 2019, due to Counsel's unavailability prior to that date. However, instead of then actioning this matter I returned the file to the Criminal section where it remained until Counsel quite rightly chased it a few days ago. I can only apologise on behalf of the SCCO for this state of affairs, the responsibility for which is mine alone.

Background

3. Counsel represented the Defendant, Daniel York under a Representation Order dated 5 December 2016 (Appeal) but had also represented him at his Trial. The Defendant had been charged on a twenty-nine count indictment alleging sexual offences in relation to nine children. At the end of the Trial he was unanimously found Guilty of twenty-eight counts. Per Counsel's Note, the trial involved the most serious allegations; the remainder were held on a second indictment, in respect of which a further Trial would have taken place, had the defendant not entered an acceptable plea. In fact, he had previously pleaded Guilty to three counts and subsequently pleaded Guilty to a further eight counts leaving the Judge to sentence him in relation to a total of forty counts (by Counsel's arithmetic – I make it thirty-nine) relating to seventeen children. I note that, possibly due to the attendant publicity, but also due to seizure of computer equipment from the Defendant's home, what had started as an investigation upon the complaint of one victim, grew over time as more victims either came forward or were discovered in the investigation.
4. On 5 December 2016 the Defendant was sentenced to an extended sentence of twenty-two years imprisonment, with six years extended licence following a finding of dangerousness. On Appeal it was alleged that the sentence was manifestly too severe; that Ground had a measure of success as the twenty-two years was reduced to eighteen years imprisonment. However, the Appeal as to dangerousness did not succeed, with six years extended licence remaining in place.
5. The above is very much a precis of what this case involved; the youngest victims (aged ten and twelve) had been groomed online by the Defendant, induced to perform sex acts on camera and to forward those images to him. Many of the victims had been groomed and abused in this way but also in a number of cases the Defendant had met children (typically aged fifteen) at hotels where he had paid them to engage in sexual activity with him. The case, with so many offences of different types against so many victims, was complex, heavy and emotionally draining; Counsel specifically refers to the fact that the jurors in this case were formally excused from ever having to serve again, after having to view (and hear) the evidence which was, even as briefly described above, clearly very distressing.

6. As to the dangerousness of the Defendant, Counsel wished to rely upon a fairly striking fact. Namely, when the first victim complained, the Defendant was arrested at home on 4 September 2013 but released (on bail) without charge. Computer equipment seized on that date led to the discovery of offences involving seven other children (girls) and he was further arrested, but that was not until 30 June and 15 July 2015, almost two years later. At some point thereafter the Defendant's bail ceased and he was put in prison; however he was on bail for some twenty-six months from his arrest on 4 September 2013. On 4 February 2016 the Defendant was produced from prison to be arrested and charged with three offences against a further victim, but Counsel's point was that from 4 September 2013 until he was put in prison, although he was forbidden to contact the victim who had first complained, the Defendant was otherwise fairly unrestricted as to his movements and activities. For example, it does not appear that he was barred from using a mobile phone or a computer. Yet he desisted from all illegal activity during this period, and that fact (per the Grounds of Appeal) was strongly relied upon in relation to the Ground in relation to dangerousness.
7. Counsel drafted the Grounds of Appeal (22 pages) on 22 and 23 December 2016 being the days immediately before Christmas, and at a time when his children were off school. Whilst I recognise that this would likely make reviewing this particular case all the more harrowing it is of course the stuff of legal practice that deadlines tend to cut across evenings, weekends and even religious observances. That said, Christmas is not only a religious festival it is a series of Bank Holidays and office (and Court) closures and I do accept that the timing in this case would have been unusually trying as a result.
8. I have set the above out at some length to indicate that I do not by any means underestimate either the seriousness of the Defendant's position or the complexity of the issues faced Counsel. Nor does it appear that the Determining Officer underestimated these: the Written Reasons state in terms, *"I must state from the outset that the seriousness and importance of this Appeal and the difficulty and enormity of marshalling the counts and facts as related to individual complainants was taken into account on determination."* He goes on to caveat that by saying, *"The fee of £625 allowed is more than 10 times the prescribed fee at a notional hourly rate reflective of the circumstances of the case and difficulties presented."*

Amounts claimed and allowed

9. The amounts (in terms of time and money) as claimed by Counsel, and as allowed by the Determining Officer, are as follows:

Description	Claim time h	Claim fee	Allowed time h	Allowed fee
22.12.17 Drafting Grounds of Appeal	6	929.00	6	625.00
23.12.17 Drafting Grounds of Appeal	5	774.00	5	

20.04.17 Reviewing documents from Criminal Appeal Office	1.5	232.00	1.5	425.00
15.09.17 Checking Judge's Index and Criminal Appeal Office Summary	0.5	77.00	0.5	
03.10.17 Annotating key documents, preparing speaking note	1	156.00	1	
04.10.17 Hearing in Court of Appeal	1.5	232.00	1.5	
Total	15.5	2,400.00	15.5	1,050.00

The figures in italics have been extrapolated by me; Counsel simply states that his fee is £2,400.00 plus VAT for 15.5 hours of work, and pro rata that would equate, roughly, to the above. Putting it another way:

Work before Single Judge Stage	11	1,703.00	11	625.00
Work after Single Judge stage, to include Hearing	4.5	737.00	4.5	425.00
Total	15.5	2,400.00	15.5	1,050.00

10. The prescribed figures set out in the Criminal Legal Aid (Remuneration) Regulations 2013, at Schedule 3, paragraph 9, are as follows, for Junior Counsel:

Brief fee	£545.00
Full day refresher	£178.75
Attendance at consultations, conferences and views (per hour)	£33.50
Written work (maximum per item)	£58.25
Attendance at PTR, Applications and other appearances (maximum per appearance)	£110.00

11. This case lasted half a day; hence there was no refresher. Nor were there any conferences, the only written work was the Grounds and there was no PTR or similar attendance either. As such, the maximum at the prescribed figures would appear to be £545.00 plus presumably £58.25 for the Grounds. There is however a caveat, in paragraph 9(4) under which the Determining Officer has already indicated he accepts a higher fee than that prescribed, is payable:

(4) Where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with the table following subparagraph (1) would not provide reasonable remuneration for some or all of the work the appropriate officer has allowed, the appropriate officer may allow such amounts as appear to the appropriate officer to be reasonable remuneration for the relevant work.

12. I note the reference by the Determining Officer (on the final page of the Written Reasons) to £625.00 for the preparation work, being "...more than 10 times the prescribed fee at a notional hourly rate reflective of the circumstances of the case

and the difficulties presented.” Per the above, it appears the Determining Officer takes the view that Grounds are an item of “written work” at a maximum fee per item of £58.25, as £625.00 is certainly more than ten times that amount.

13. Be that as it may, I have reminded myself of the decision of Pennycuik J in *Simpson’s Motor Sales (London) Ltd* as cited by Hickinbottom J (as he then was) in *Evans v The Serious Fraud Office* [2015] EWHC 1525 (QB) regarding the question of hourly rates once one has, as Counsel clearly has, escaped prescribed fees. In *Evans* hourly rates of £480 per hour and £240 per hour were appropriate for leading and junior counsel respectively for “top end” criminal work (*Evans* itself concerned a substantial prosecution for conspiracy).
14. Obviously this was not “top end” criminal work, but equally obviously, Counsel does not claim it was; his hourly rate is something in the region of £154.00 or thereabouts (£2,400.00 does not divide neatly by 15.5). Counsel was called to the Bar in 2004 therefore he is a very senior Junior. The Determining Officer accepts that Counsel has spent the amount of time claimed on his Brief; there is reference in the Written Reasons to his prior knowledge of the case from the original Trial but I accept Counsel’s submissions to the effect that with this many counts and victims, the proximity of the Trial and his knowledge thereof, enabled him to draft 22-page Grounds in two days rather than in a week or longer had he come to the case fresh (or presumably had he returned to it after a lengthy delay).
15. In any event, given that the Determining Officer accepts the time spent on this matter as claimed, his comments about Counsel’s familiarity with the case are noted, but he must, in accepting the time spent, have recognised that someone less familiar with the case, would have taken much longer to do the same work.

Decision

16. What is important here is whether the fee allowed was reasonable under the appropriate fee regime under which it has been assessed and paid, that is to say Schedule 3 of the Criminal Legal Aid (Remuneration) Regulations 2013, and I have duly considered these in reaching my decision. Given the work that Counsel had to do on the Advice and Grounds of Appeal, and given the proximity thereof to the Trial (less than three weeks prior) I have to consider whether the amount allowed is indeed sufficient to provide reasonable remuneration for the work actually and reasonably done, taking into account all of the circumstances of the case.
17. In my judgement on the facts in this particular case the Determining Officer has not allowed an amount sufficient to provide reasonable remuneration. He appears to have misdirected himself in taking £625.00 as more than 10 times the prescribed rate for the Grounds of Appeal; the question is not how many times the prescribed fee, has been allowed, but whether the amount allowed is sufficient to provide reasonable remuneration. For 22-page Grounds of Appeal in a case involving so many counts against so many victims, with tight timescales and several Bank Holiday dates and attendant Court closures looming, I find Counsel’s fee as originally claimed to be reasonable and the allowance of less than half that amount by the Determining

Officer, to be insufficient to provide reasonable remuneration for the work actually and reasonably done, taking into account all of the circumstances of the case.

29. Accordingly this appeal succeeds, and to the balance of Counsel's fees should be added the £100.00 Appeal Fee and £500.00 costs of Appeal.

To:

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