



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 191/19

Dated: 12th November 2019

ON APPEAL FROM REDETERMINATION

REGINA v HALE

COURT OF APPEAL (CRIMINAL DIVISION)

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: 2017/04248/A3

REGISTRAR OF CRIMINAL APPEALS CASE

DATE OF REASONS: 11th June 2019

DATE OF NOTICE OF APPEAL: 2nd July 2019

APPLICANT: COUNSEL
Mr Paul Taylor QC
Doughty Street Chambers
DX 223 Chancery Lane

The appeal has been successful (in part) for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £875 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**ANDREW GORDON-SAKER
SENIOR COSTS JUDGE**

REASONS FOR DECISION

1. This is an appeal by Mr Paul Taylor QC against the determination of his fees by Mr Greenhill, a Determining Officer, on behalf of the Registrar of Criminal Appeals.
2. Mr Taylor was instructed, as junior counsel, by the Registrar of Criminal Appeals to represent Jack Hale who had already submitted grounds of appeal against sentence. Hale, who was 19 years' old at the time of the offences, pleaded guilty to 24 counts of sexual offences involving four teenage complainants. He was sentenced to an extended sentence of 10 years, comprising a custodial term of 6 years and an extension period of 4 years. Mr Taylor was instructed after leave to appeal was granted by the Single Judge.
3. At the hearing of the appeal (the Lord Chief Justice, Nicola Davies J and Haddon-Cave J – as they then were) the court described the offences as representing “a sustained and predatory course of sexual criminal conduct” over 3 years. The court concluded that an extended sentence was appropriate but reduced the period of extension to two years. The ground of appeal that the length of the extension period was manifestly excessive, was suggested by Mr Taylor after leave to appeal had been granted and so it was necessary to seek leave to add and rely on that ground.
4. Mr Taylor claimed fees of £4,700 excluding value added tax. That was apparently calculated on the basis of 30 hours' preparation at £140 per hour and £500 for attending court. In fact Mr Taylor spent 45 hours in preparation but discounted 15 hours on the ground that they related to the two of his three additional grounds of appeal for which leave was not granted.
5. Mr Greenhill determined the fee at £2,500, calculated on the basis of £80 per hour for 30 hours' preparation and £100 for attending court. In doing so he accepted all of the matters that had been raised by Mr Taylor, including the reasonableness of the preparation time. That decision was maintained on redetermination and it is against that decision that Mr Taylor now appeals.
6. In his written reasons Mr Greenhill commented that he was aware of a number of decisions by costs judges on appeal from decisions in his section concerning the same counsel (not Mr Taylor) in which hourly rates of between £80 and £150 had been allowed. Mr Greenhill wondered whether too much reliance was being placed on the hourly rates allowed in those cases:

“... over 5,000 payments have been made by this Court to over 1,000 different counsel of which over 99% have not resulted in an appeal to a Costs Judge despite only 60% of the overall total amount being claimed. Hourly rates paid to and accepted by counsel have been considerably less than those allowed by the Costs Judges ...”

Mr Greenhill then listed a number of decisions in which rates of between £50 and £75 had been allowed and accepted.

7. In his written submissions Mr Taylor argued that Mr Greenhill's reasoning amounted to an abuse of process. The Lord Chancellor had not pursued an appeal against any of the costs judges' decisions referred to and it was not now open to Mr Greenhill to do so. Further, the reasoning lacked merit. The rates allowed in the costs judges' decisions were all based on the decision of Hickinbottom J (as he then was) in *Evans & Others v SFO* [2015] EWHC 1525 (QB). In support of the hourly rates claimed Mr Taylor relied on two of the decisions referred to by Mr Greenhill: *R v Palmer* [2017] in which Master Whalan allowed a rate of £125 for an appeal against sentence where the defendant was found guilty of two offences of sexual activity with a 15 year old complainant; and *R v Younas* [64/18] where Master Whalan allowed £150 per hour for an appeal against sentence in a case involving two counts of rape of an 8 year old child.

8. In my view the focus on hourly rates, both in these cases and in the present appeal, is misdirected. The representation order was granted on 5th December 2017 and accordingly the claim is governed by the provisions of the Criminal Legal Aid (Remuneration) Regulations 2013. Schedule 3 relates to proceedings in the Court of Appeal. Sub-paragraph 1(2) provides that:

In determining fees the appropriate officer must, subject to the provisions of this Schedule—

 - (a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and
 - (b) allow a reasonable amount in respect of all work actually and reasonably done.

9. Sub-paragraph 6(2) provides that the appropriate officer may allow the following classes of fee to an advocate: "a basic fee for preparation including ... where appropriate, the first day's hearing"; refresher fees; and subsidiary fees for conferences, written work, applications and the like.

10. The table under sub-paragraph 9(1) provides prescribed fees for counsel of the types referred to in sub-paragraph 6(2), namely basic fees, refreshers and subsidiary fees. The maximum basic fee for junior counsel is £545 and for leading counsel is £5,400 (a ratio which would seem difficult to justify). The only hourly rates specified in the table are £33.50 for junior counsel and £62.50 for leading counsel in respect of "Attendance at consultation, conferences and views". Sub-paragraph 9(4) provides:

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 sub-paragraph (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.

11. The provisions of schedule 3 (and indeed the amounts of the prescribed fees) were unchanged from the provisions of schedule 4 of the Criminal Defence Service (Funding) Order 2007.
12. Clearly in the present case Mr Greenhill has, quite rightly, concluded that a basic fee of £545 would not provide reasonable remuneration for the work reasonably done by Mr Taylor.
13. Mr Taylor is therefore entitled to a basic fee for preparation and the hearing which reflects reasonable remuneration having regard to all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.
14. The “reasonable brief fee” that should be allowed is the fee that “a hypothetical counsel, capable of conducting the case effectively, but unable or unwilling to insist on the higher fees sometimes demanded by counsel of pre-eminent reputation, would be content to take on the brief: but there is no precise standard of measurement and the judge must, using his or her knowledge and experience, determine the proper figure” – per Pennycuik J. in *Simpsons Motor Sales (London) Ltd v Hendon Corpn* [1964] 3 All ER 833. In criminal cases the factors which should be taken into account are helpfully suggested in Part II of the Taxing Officers’ Notes for Guidance (2002).
15. As paragraph 2.6 of TONG makes clear, in assessing the basic fee:

The fee appropriate to the case depends upon proper and careful assessment of all the relevant circumstances, including the weight of the case and the skill and responsibility involved in its conduct. Hours of preparation are only a factor to be taken into account, they are not the basis of an arithmetical calculation.
16. It is clearly not appropriate to assess basic fees solely by reference to time reasonably spent. The obvious reason for that is, as has often been stated, that it would benefit the slow and penalise the quick.
17. The relevant factors are set out in Mr Taylor’s note on taxation, and which were accepted by the Determining Officer. Hale was a young man of previous good character who had pleaded guilty to a large number of very serious offences with aggravating features involving 4 complainants over a 3 year period. Preparation therefore involved considering a significant amount of detail; liaising with the Criminal Appeal Office, with leading and junior counsel and solicitors instructed in the Crown Court and with counsel for the respondent; considering the respondent’s notice; conferring with Hale by video link; drafting a skeleton argument and preparing a bundle. Counsel also formulated a further ground of appeal which was successful.
18. Without solicitors, counsel assumed the whole burden of the appeal. Mr Taylor was, at the relevant time, a senior junior (called in 1989) who specialises in criminal appeals. The circumstances of the case (24 counts and

no prior involvement in the case by counsel) were such that it was necessary for him to spend a significant amount of time in preparation.

19. The assessment of basic fees requires a value judgment, taking into account all of these matters together with the experience of the assessor.
20. Mr Greenhill has considerable experience in the determination of fees for criminal appeals. However in my judgment the fee allowed does undervalue the weight of the case, the burden placed on Mr Taylor, his seniority and specialism, and the amount of preparation time required. Reasonable remuneration in this case, in my view, would be a basic fee of £4,250 and the appeal is allowed to that extent.
21. Mr Taylor should be entitled to his costs of the appeal. In respect of this case and *R v Day*, which were heard together, he spent about 12½ hours in preparation and the hearing lasted less than an hour. As one expects with him, but sadly of few others, the papers he lodged were in impeccable order. I think that a reasonable fee for presenting the 2 appeals would be £1,750 and I allow a moiety for this appeal. As I explained to him at the hearing, and he accepted, I would not be minded to allow a fee for leading counsel for appearing on this appeal; so it is what I consider to be the appropriate fee for a junior.

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