



SENIOR COURTS  
COSTS OFFICE

SCCO Ref:  
SC-2019-CRI-000118

30 April 2020

**ON APPEAL FROM REDETERMINATION**

**REGINA v WILLIAMS**

CROWN COURT AT NORWICH

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

CASE NO: T20187183

DATE OF REASONS: 17 OCTOBER 2019

DATE OF NOTICE OF APPEAL: 26 NOVEMBER 2019

APPLICANT: SOLICITORS NORTON PESKETT

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

The appropriate additional payment, to which should be added the sum of £250 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**JASON ROWLEY  
COSTS JUDGE**

## REASONS FOR DECISION

1. This is an appeal by Norton biscuit solicitors of Lowestoft against the decision of the determining officer to assess the fee payable under the Litigators Graduated Fee Scheme as a guilty plea rather than as a cracked trial.
2. Section 1 of schedule 2 to the Criminal Legal Aid (Remuneration) Regulations 2013 contains various definitions including:

“cracked trial” means a case on indictment in which—

(a) the assisted person enters a plea of not guilty to one or more counts at the first hearing at which he or she enters a plea and—

(i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and

(ii) either—

(aa) in respect of one or more counts to which the assisted person pleaded guilty, the assisted person did not so plead at the first hearing at which he or she entered a plea; or

(bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the first hearing at which the assisted person entered a plea, declare an intention of not proceeding with them; or

(b) the case is listed for trial without a hearing at which the assisted person enters a plea;

“guilty plea” means a case on indictment which—

(a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and

(b) is not a cracked trial;

3. The solicitors were instructed on behalf of Samantha Williams who was charged with two counts of conspiracy to supply class A drugs. The case was sent from the Norwich Magistrates Court on 17 August 2018 for a Plea and Trial Preparation Hearing (PTPH). There were a total of nine co-defendants in the case. Ms Williams did not plead at the PTPH but indicated a not guilty plea would be entered. A trial date was fixed for 4 February 2019 at the PTPH but on 18 December 2018 Williams pleaded guilty and so the trial did not go ahead.
4. The determining officer says that these facts do not justify a cracked trial fee because the defendant did not plead “not guilty” at the PTPH because she was not formally arraigned. The hearing on 18 December 2018 was for a mention and at which time the defendant pleaded guilty. Those circumstances do not satisfy the definition of a cracked trial and as such the fee is calculated as a guilty plea in accordance with the regulations.
5. The determining officer appreciated from the request for written reasons that the advocate involved in this case had been paid a cracked trial fee by the Advocates Graduated Fee Scheme determining officer but that decision was being reviewed.

6. The solicitors say that the circumstances of the hearing on the 13 September 2018 are sufficient to amount to the entry of a plea for the purposes of justifying a cracked trial fee. The advocate's note of the hearing apparently contained an endorsement which stated:

"Because of the truncated morning and D's appearing at different times the Judge sends SW away before she puts a plea in."

7. The judge at the PTPH recorded the following on the Digital Case System at 12:50pm on the same day:

**"PTPH, williams yet to be arraigned**

Donkoh indictment joined with other multi-handed indictment.  
no need for Donkoh to be re-arraigned today. Previously - NG pleas entered.

Summary:-

Vincent G x 2

Starkings NG

Thain FTA claims concussion relist 20/09 to attend with medical evidence else warrant and BAO

Thomas FTA WNBFB

Reinis NG (interpreter had to leave by 11)

Burt NG

Williams - indicated it would be NG but not arraigned today in absence of counsel on a busy day

PTPH form completed, stage dates and warnings

opening note:21/12/18

PTR and further directions re trial readiness. Admissions etc 11/01/19

Trial 04/02/19 - 15 day estimate presently court allows 3-4 weeks

..."

8. The Legal Aid Agency's Crown Court Fee Guidance accurately describes the essence of a cracked trial as being that after the PTPH there is still the real possibility of a trial. The express way of this occurring is of course for the defendant to plead not guilty. But the guidance refers to the court setting a trial date as being a way of marking the possibility that a trial will go ahead. That description in itself suggests that a formal plea at the PTPH is not an absolute requirement.
9. This case was originally going to be heard by me on 30 March 2020 but ultimately the parties agreed that the issue was a narrow one and that it would be appropriate for me to provide a decision on the papers and without a hearing.
10. I am in no doubt that this case qualifies for a cracked trial fee. The judge's note expressly describes the hearing as a PTPH and it is clear that a number of the co-defendants did formally plead at that hearing. Williams indicated what her plea would be, but in the absence of her counsel, on what everyone described as a busy morning, she was not formally arraigned. It seems to me to be taking an overly literal interpretation of the regulation to consider that hearing to be

anything other than one where the defendant's position in respect of the counts was made clear to the judge.

11. I appreciate that the graduated fee scheme is intended to be mechanistic and simple to apply. Consequently, the formal entering of a plea is no doubt looked for by the determining officer as a marker that a cracked trial fee would be appropriate. But given the clear entry on the DCS and the explanation why a formal plea was not entered when pleas were being taken from the co-defendants, it seems to me that the determining officer ought to have concluded that a not guilty plea would have been entered if her counsel had been able to be present at the relevant time.
12. If there were any doubt about this, the fact that a formal trial date was set at the hearing seems to me to enforce the position that this case comes within the Crown Court Fee Guidance produced by the Agency and if the determining officer was in any doubt about the fee to be applied, that guidance ought to have assisted.
13. But even if neither of these aspects satisfied the determining officer that a cracked trial fee was payable in the absence of a formal plea, the logical position must be that this case satisfied the alternative limb of the definition in that a trial had been fixed without the defendant having entered a plea. The date is clearly marked on HHJ Catherine Moores' note of the proceedings. The fact that the defendant pleaded guilty in December at the first time of being formally asked how she pleaded does not detract from satisfaction of the second limb of the definition of a cracked trial.
14. Accordingly, this appeal succeeds and the appellant is entitled to a recalculation of the fee payable on the basis of it being a cracked trial fee.

TO: NORTON PESKETT  
DX 41200 LOWESTOFT

COPIES TO: HELEN GARTON  
LEGAL AID AGENCY  
DX 10035 NOTTINGHAM