



SENIOR COURTS  
COSTS OFFICE

SCCO Ref: 182/19

Dated: 20 April 2020

**ON APPEAL FROM REDETERMINATION**

**REGINA v AHMED**

ST ALBANS CROWN COURT CROWN COURT

APPEAL PURSUANT TO ARTICLE 30 OF THE CRIMINAL DEFENCE SERVICE  
(FUNDING) ORDER 2007 / REGULATION 29 OF THE CRIMINAL LEGAL AID  
(REMUNERATION) REGULATIONS 2013

CASE NO: T20177296

LEGAL AID AGENCY CASE

DATE OF REASONS: 4 June 2019

DATE OF NOTICE OF APPEAL: 26 June 2019

APPELLANTS: Faradays Solicitors

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

The appropriate additional payment, in addition to the £100 paid on appeal and  
£1,000 for costs, should accordingly be made to the Appellant.

**MASTER NAGALINGAM  
COSTS JUDGE**

## REASONS FOR DECISION

### Introduction

1. Faradays Solicitors, ('the Appellant') appeal against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') to reduce the number of pages of prosecution evidence ('PPE') forming part of a Litigators' Graduated Fee ('LGF') claim.
2. The Appellant submitted a claim for 10,000 PPE, based on there being approximately 20,000 pages of electronic exhibits served on various discs. No claim for special preparation in addition to the 10,000 PPE claim is made. The Respondent originally allowed 4,582 PPE. Following a request for redetermination this was increased to 4,600 pages, comprising 460 paper pages of exhibits and 4,140 electronic pages of exhibits for the LGF.
3. Following the making of this appeal the Respondent has viewed call data reports which it concedes were not previously considered by the Determining Officer and now allows a further 225 electronic pages taking the total page count to 4,825 pages.
4. Accordingly, the Appellant's costs up to the hearing shall be payable in the sum outlined above in any event in order to reflect the extent to which this appeal has already been successful.

### Background

5. The underlying offences in this case concern a total of five offenders.
6. Mr Ali, Mr Uddin and Mr Alam were indicted on a charge of conspiracy to commit fraud by false representation between 9 October 2016 and 20 January 2017, contrary to section 1(1) of the Criminal Law Act 1977. They were accused of conspiring together and with others unknown to commit fraud by making false representations, namely that individuals were required by police officers to hand money over in order to further criminal investigations,

intending to make gain, namely, for themselves or others or to cause loss to another or to expose another to the risk of loss.

7. Mr Miah and the Defendant were indicted on charges of entering into or becoming concerned in a money laundering arrangement between 9 October 2016 and 20 January 2017, contrary to section 328(1) of the Proceeds of Crime Act 2002. They were accused of entering into or becoming concerned in an arrangement, namely which they knew or suspected facilitated the acquisition, retention, use or control of criminal property, namely the proceeds of fraudulent behaviour, by or on behalf of other persons namely Mr Ali, Mr Uddin and Mr Alam.
8. The fraud involved victims being contacted by telephone by someone who identified themselves as a Police Officer with the intention of tricking them into handing over money, typically savings, on the pretence it was necessary as part of a Police investigation and to foil an attempted banking fraud.
9. The caller sought to convince the victims that their bank account had been compromised and their money was in danger. The victims were told to hang up their phone and to call their bank or dial 999 but the caller in fact remained on the line thus the victims were duped into thinking they had then legitimately dialled their bank or 999. Another person would then play the role of a bank employee or 999 operator in order to further the fraud.
10. The victims were then instructed to withdraw large amounts of money from their targeted account. The victims were also falsely informed that bank employees were involved in the 'scam' in order to encourage the victims not to reveal why they were making a large withdrawal. Victims were also told not to inform friends or family in case it jeopardised the Police and bank's investigation.
11. The offender would then use a different phone to contact other offenders who would arrange for collection of withdrawn money from the victims by a 'courier'. Victims were told their money would be deposited back into their accounts after a few days and that Police Officers would attend their homes to

take statements. It was only upon their being no further contact did the victims realise they had been targeted and contact made with the real Police.

12. Each of the five known Defendants were alleged to have to have played a specific role in the fraud. Mr Ali for contacting the victims. Mr Uddin for sourcing the phones used in the fraud and also contacting the victims. Mr Alam for arranging courier collections of money from the victims and Mr Miah for carrying out the collections.
13. The Defendant was alleged to have been present on two of the seven identified occasions, on 10 and 12 October 2016, when money was collected from victims of the fraud. The Defendant was further alleged to have been involved in the actual collection of packages from the victims.
14. The Defendant denied knowing any of the co-conspirators save for Mr Ali and said that any cell site, telecoms or handset data showing the Defendant had travelled to the home address of victims at the time money was taken from the victims was in fact for entirely innocent reasons. The Defendant denied taking any money or being knowingly involved in a fraud gang. He said he had attended the victims' addresses under the misapprehension that he was there to accompany an acquaintance whilst they collected money for a car they had sold, and who didn't want to travel alone with large amounts of money.
15. The appeal concerns the LGF of the Appellant, with the basis of the appeal being to what degree should the electronic evidence be allowed as PPE and on what basis should any page count of electronic evidence be made, with specific reference to Excel and PDF formats of electronic served used evidence.

#### The Regulations

16. The Representation Order (amended) is dated 3 May 2018 and so the applicable regulations are The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations').

### Authorities

17. Authoritative guidance was given in *Lord Chancellor v. SVS Solicitors* [2017] EWHC 1045 (QB), in particular the principles set out at paragraph 50 of the same.
18. The Appellant has additionally cited the judgments in *R v O'Rourke & Ors* [2017] SCCO Ref 10/17, 34/17 & 47/17, *R v Mooney* [2019] SCCO Ref 99/18 and *Lord Chancellor v Edward Hayes LLP & Anor* [2017] EWHC 138 (QB).
19. The Respondent has cited a number of judgments as set out in the Respondent's submissions, including *R v Napper* (SCCO 156/15), *R v Daugintis & Ors* (SCCO Ref: 154/17, 155/17 & 177/17) and *R v Frempong* (SCCO Ref: 84/18).

### The submissions

20. The Respondent's case is set out in the Written Reasons dated 4 June 2019 and in written submissions drafted by Mr Michael Rimer. The Appellant's submissions are set out in their Grounds of Appeal and a document titled "Skeleton Argument on behalf of the Appellant". I have also had regard for the appeal bundle and the electronic evidence in question, of which there are multiple discs. In accordance with my directions, Mr Rimer has prepared a Scott Schedule analysing the content of the electronic evidence. The Scott Schedule sets out the number of pages claimed by the Appellant, what was allowed by the Determining Officer, and what the Respondent has allowed on appeal. The Scott Schedule additionally sets out the Respondent's page count of each relevant section in both PDF and Excel, seeking to remunerate the Appellant on the basis of the PDF version on each occasion.
21. Whilst the Appellant has provided responses to the Scott Schedule, the responses provided are repeated throughout as follows:  
  
"A defence expert – John Cross – was instructed to look at the data and he has confirmed that he would always use Excel versions of the data only, as

this was a more reliable and detailed version of data, a factor which Litigators rely upon too when looking at data served on disc”.

22. All of the responses to the appealed allowances contain the above passage, save that the first response additionally proceeds to state:

“Excel better lends itself to analysis by way of various filters and tools. The LAA accept that the Excel contains additional functionality not present in the PDF.

Excel is the best format in which to work.”

23. The Appellant accepts that the Defendant was indicted on a single charge but argues this formed part of a wider conspiracy. The defence was one of non-involvement and certainly no knowing involvement.
24. Whilst not appearing to be in issue, Mr Wells (Counsel for the Appellant) sought to stress that telephone and communications data was the evidential basis of this case - which he invited me to take into account when considering importance and relevance.
25. With regards to the page count, the Appellant relies on the Notice of Further Evidence dated 13 February 2019 which states on its face “For the purposes of the remuneration of the defence counsel the notional page count for evidence held and served electronically would be:- 10,602”. Mr Wells argues for “commercial certainty” in that where the prosecution and defence agree a page count and all of the material is relevant then the Litigator is entitled to rely on that and work accordingly in expectation that they will be remunerated in line with that page count.
26. Mr Wells rejects any suggestion of duplication on the basis that the Appellant has at all times only sought remuneration on the basis of a page count taken from one version for each exhibit.
27. The Appellant places a great deal of faith in the anecdotal evidence of Mr Cross and refers me to an Annex to the Appellant’s skeleton argument, which is described as being “John Cross defence expert comments on PDF versus

Excel (taken from email dated 7.11.19)” which, in summary, explains Mr Cross’ approach to data analysis and why he says Excel is preferable.

28. It is largely for the same reasons as explained by Mr Cross that the Appellant submits they should be remunerated based on a page count taken from Excel, because the Appellant largely worked from the Excel version of the electronic evidence. Mr Wells also submits that there are no “vast quantities of irrelevant material” (citing the Legal Aid Agency’s concerns as set out in *O’Rourke*) within the Excel version of the electronic evidence.
29. With regards to the image data the Appellant seeks an additional 1,834 pages using a count based on the PDF format. This is on the basis that the Appellant has been remunerated for images of ‘moneygram’ slips taken from file exhibit CB/13223 (paid as paper PPE) but has not been remunerated for the remainder of the pictures from that exhibit. Mr Wells cites the application of hindsight by the Respondent in refusing to remunerate the balance of pages of images on the basis that “not all the images appear to be relevant”. Relying on *R v Mooney*, the Appellant argues against the application of hindsight and submits that where some images are to be allowed then all images should be allowed.
30. Mr Rimer for the Respondent invites focus on there being two actual allegations that on 10 and 12 October 2016 the Defendant visited the homes of victims as part of the fraud conspiracy and took their money.
31. The Defendant had accepted he was present at or near the victims’ homes at the times and dates on which money was taken but relied on a defence that he was simply accompanying a friend who told him they were collecting money for a previously sold car.
32. Mr Rimer accepts that the telephone data was served and relied on by the prosecution. Mr Rimer accepts that the telephone evidence was important. However, he submits that remuneration should be relative to the Defendant’s alleged involvement. Mr Rimer also accepts this appeal is correctly framed in terms of using Excel or PDF formats for the purposes of a PPE page count.

33. Mr Rimer submits that it is normal practice for the CPS to serve download reports in two formats, typically being in Excel and PDF. Mr Rimer also accepts that parties will routinely consider the Excel version because it can be manipulated and filtered. He says that the PDF version however is useful in demonstrating an accurate page count were the same to be reproduced in printed format. He contrasts this with Excel where a print preview (to obtain a page count) produces an unreasonably high and misrepresentative page count. He likens printing out an Excel document as akin to creating a jigsaw (when considered in paper format).
34. Mr Rimer invites me to consider the PDF version as the “source material” and additionally observes that the Defendant also benefited from the instruction of a Telecoms expert, who has already been remunerated. It is worth mentioning that the use of a Telecoms expert in this case related to the triangulation of mobile and cell site data, whereby it was important to try and establish whether or not the Defendant had remained in a car parked nearby to the victims’ houses or had in fact visited the victims’ houses on the relevant dates.
35. During his submissions I referred Mr Rimer to an example page of PDF data which showed a reduced font size that made the data page barely legible. Mr Rimer suggested that where necessary such pages could be reproduced in A3 size for the purpose of presentation to a jury.
36. With regards to the NFE1 figure Mr Rimer submits that the page count figure agreed by the prosecution and defence is neither binding nor relevant, observing additionally that the CPS is paid on a different basis to the defence. He accepts that the NFE1 figure falls to be considered by the Determining Officer but that it is not persuasive.
37. Mr Rimer commends calculation of remuneration on the basis of a PDF page count and that the appropriate means by which to remunerate any additional costs arising out of analysis of the Excel data would be my means of a claim for special preparation in addition.



38. With regards to the image data Mr Rimer questions how thousands of images on Mr Uddin's phone could be relevant to a defence that relied on saying the Defendant did not know Mr Uddin? Mr Rimer also queries how image data could be relevant given the Defendant's limited involvement and explanation given as to his presence in the vicinity of the victims' houses on the dates money was collected from those properties.

My analysis and conclusions

39. This is a decision as to what proportion of the evidence served electronically ought to be remunerated as PPE. Part of the outcome of this appeal rests with the question of whether to base the page count on the PDF version of the exhibits, the Excel versions, or a combination of the two. The Appellant seeks either of the latter two options and submit that either would take them over the 10,000 PPE count.
40. In addition to that is the question of what the page count ought to be, depending on which format is permitted. Any later claim for special preparation is somewhat of a footnote and is matter between the parties. At this stage there is no claim for special preparation so there is no reason for decisions as to special preparation to form part of this judgment.
41. Mobile telephone handset downloads typically fall within the definition of Paragraph 1(5) of Schedule 2 of the Criminal Legal Aid (Remuneration) Regulations 2013 and so the extent to which downloaded data is included in the PPE count is a question of appropriateness, taking into account the nature of the data and all relevant circumstances.
42. I make no criticism of the Respondent for recognising that the Appellant is under a duty to consider all served used evidence. However, it does not follow that all served electronic used evidence is then automatically included as PPE for the purposes of calculating remuneration. If that were the case, then Paragraph 1(5) of Schedule 2 of the Criminal Legal Aid (Remuneration) Regulations 2013 would be redundant. One must recall that once a data set is established as 'prosecution evidence', the key remaining word of "PPE" is

'pages'. Thus, it falls to the Determining Officer, or the Costs Judge on appeal, to consider what a 'page' of evidence is as well as whether that page is appropriate for inclusion in the PPE count?

43. The Appellant relies on *R v O'Rourke*, which I have considered. I am not bound by the same and in any event consider the decision to be case specific. I accept the proposition that when faced with data presented in PDF and Excel format that it will not always be the case that the PDF format is favoured for the purposes of a page count. However, the use of the Excel format for a page count must be justified and in keeping with the spirit of the regulations.
44. The electronic evidence in this matter is comprised of multiple discs and it has been a time-consuming exercise to consider the appropriateness of remuneration by means of a page count based on PDF or Excel or a combination of the two.
45. In so far that at any stage duplication was alleged by the Respondent, by the time of the hearing of the appeal all such allegations had been withdrawn. In any event it was not apparent to me that any part of the page count commended by the Appellant would constitute duplication.
46. Further, there is no dispute that the material in question was served by the prosecution as used material. The issue in dispute is whether the Determining Officer was correct to include some, but not all, of the electronic material within the PPE count and in particular whether the Determining Officer exercised their discretion reasonably to quantify the PPE by reference to material in PDF rather than Excel format.
47. I am not persuaded by Mr Wells' argument regarding the NFE1 which, if accepted, would render the discretion exercised under the regulations to be redundant. The Legal Aid Agency or the Court are not bound by the page count for electronic evidence settled on by prosecution and defence counsel. Even the NFE1 form itself recognises that the page count is notional. Further, prosecution and defence litigators and advocates are not remunerated on the same basis. For remuneration purposes all electronic evidence must be

considered in line with the requirements of the regulations and will be assessed as such. Any invitation to blindly accept the figure on the NFE1 form is declined.

48. **There is no dispute that Excel lends itself to greater functionality for the purposes of analysis when compared with PDF. However, one must recall that the regulations simply provide mechanisms for remuneration.** A litigator, or indeed advocate, is not compelled to submit a claim for remuneration based on PPE. It is open to them to submit a claim in special preparation or indeed a combination of PPE and special preparation. Special preparation claims are not limited to work in excess of the 10,000 PPE limit. The Appellant places reliance on the anecdotal evidence of Mr Cross. However, Mr Cross (in Annex A to the Appellant's skeleton argument) references being paid "by the hour" whereas remuneration based on PPE is in reality unlikely to be reflective of a time and rates calculation. Simply because documents were considered in Excel it does not mean that remuneration based on an Excel page count will automatically follow.
49. With regards to the image data it is clear this formed part of the prosecution case. Given the nature of the allegations, my conclusion that association with the co-defendants in this case was a central factor, and avoiding the application of hindsight, it is clear that the image data was relevant.
50. With regards to the page count it is not clear to me what the Appellant says the Excel page count would be. The Appellant variously refers to a figure "exceeding 20,000" and "approximately 20,000" in its skeleton argument and grounds of appeal. Within the appeal bundle under tab "disc exhibits" is a full breakdown of the exhibits ("Revised Schedule of Disc Exhibits") upon which remuneration is sought and a corresponding page count. This has been prepared by the Appellant and bears a page count total of 12,855. The claimed amounts as detailed in the Scott Schedule correspond with the Appellant's "Revised Schedule of Disc Exhibits".
51. **Whilst I do consider there to be merit in using the PDF version to arrive at an accurate page count for the purposes of calculating remuneration, that**

presumes that the PDF version of a document is legible. Mr Rimer concedes examples of where a single page of PDF is not legible unless it were reproduced in a larger page size. To put that another way, there are examples of what he would invite me to allow as a single page but in reality would need to be enlarged such that they would in fact amount to two or more pages in order to be legible. This is an example of where the decision in *O'Rourke* is relevant. In that regard I acknowledge that whilst in the vast majority of cases the PDF version will provide an accurate reflection of what would otherwise be a printed page count for remuneration purposes under the regulations, it will not always produce an accurate page count. Clearly adjustments have to be made where such instances arise.

52. The purpose of the discretion within the regulations as to how to treat electronic evidence is in recognition of the fact that whilst legal representatives may be remunerated on the basis of a page count, there must be some certainty and consistency as to how that page count is arrived at.
53. Both parties rely on the decision in *Lord Chancellor v SVS Solicitors* [2017] EWHC 1045 (QB). The qualitative assessment commended by the High Court in that case does not lead to a presumption that a PDF report should be favoured over an Excel report. On a case by case basis, it falls to the Determining Officer, or Costs Judge on appeal, to consider which report best reflects the page count on an equivalent paper basis.

#### Decision

54. Whilst the Defendant was indicted on a single count it is clear that this was on the basis of a wider conspiracy. The Respondent has therefore quite rightly recognised that the electronic data in this matter, comprising handset data, telecoms data and cell site data, was both relevant and important. That is reflected in the number of pages already allowed.
55. Both parties have calculated a page count based on their submissions as to format and content. The Appellant bases their page count on the Excel report plus images from exhibit CB/13223 based on PDF (which would amount to a

further 1,834 pages). The Respondent bases their page count on the PDF reports only.

56. As observed by Master Brown in *R v Daugintis*: “The relevant provisions give the Determining Officer, and this Court, a discretion in determining which material is to be included for the purpose of assessing PPE having regard to “the nature of the document and any other relevant circumstances”. Where material is served in two electronic forms, one for ease of manipulation and analysis but the other more representative of the material if set out in printed page format, that seems to me to be a highly relevant consideration for determining the extent to which the material should count for PPE purposes”.
57. I agree with the observation that consideration of which version is best representative of a printed page format is highly relevant. The regulations explicitly recognise that litigators who represent Defendants are entitled to be paid for the work they do. The LGF scheme is a remuneration mechanism which relies on the exercise of discretion in determining what is an appropriate page count based on the nature of the document in question and any other relevant circumstances.
58. Having reviewed the served used evidence in both Excel and PDF format I do not consider it appropriate to base any page count on the allowance of both formats for any one exhibit. That would be duplication, based on my conclusion that each version is not distinguishable save for their functionality.
59. Further, having reviewed the exhibits I consider it would not be appropriate to base the page count on the Excel version throughout. The Excel versions are not representative of how a printed page count would look. The Excel versions produce an entirely distorted page count and to allow a page count based entirely on the same would be to ignore the nature of the electronic evidence before me.
60. Given my findings above with regards to images on exhibit CB/13223, and further to account for the clear difficulties in reading the PDF pages of

documents relating to elements of the downloaded data, I consider it appropriate to increase the total allowance for PPE by a further 2,000 pages.

61. Accordingly, in addition to the 4,825 pages allowed as PPE prior to the hearing of this appeal the Appellant shall recover an additional 2,000 pages of PPE.

TO:

Faradays Solicitors  
DX 89204  
Hornsey

COPIES TO:

Jas Soar  
Legal Aid Agency  
DX10035 Nottingham

Mr Michael Rimer  
Legal Aid Agency  
102 Petty France  
London SW1H 9AH  
DX328 London

**The Senior Courts Costs Office**, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL: DX 44454 Strand, Telephone No: 020 7947 6468, Fax No: 020 7947 6247. When corresponding with the court, please address letters to the Criminal Clerk and quote the SCCO number.