



SENIOR COURTS  
COSTS OFFICE

SCCO Ref:  
SC-2020-CRI-000174

16 November 2020

**ON APPEAL FROM REDETERMINATION**

**REGINA v RAFAEL**

COURT OF APPEAL

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

CASE NO: 201802328

DATE OF REASONS: 8 AUGUST 2019

DATE OF NOTICE OF APPEAL: 11 JULY 2020

APPLICANT: COUNSEL JOSEPH HEDWORTH

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 £500 (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 Joseph Hedworth of counsel against the fee allowed to him by the determining officer under the Advocates Graduated Fee Scheme in respect of his drafting of an advice on appeal and grounds of appeal.
2. Mr Hedworth claimed a fee of £900 representing six hours for drafting the documents and a further three hours of legal research claimed at a rate of £100 per hour. The determining officer considered that the tasks ought to have taken no more than six hours and allowed an hourly rate of £50 per hour thereby making an assessment of £300 for this claim.
3. Counsel requested written reasons on 25 March 2019. Those reasons were produced on 8 August 2019 but for reasons that are not clear from the papers that I have, they did not reach counsel until they were forwarded under cover of a letter of 10 June 2020 by one of the determining officer's colleagues. This background has two ramifications. The first is that counsel does not need permission to bring the appeal out of time as might appear from the front page of this decision.
4. Secondly, the timing of the drafting of the written reasons explains some of the terminology used which I suspect would not have been used if the written reasons had been produced closer to the date on which they were actually sent to counsel. In particular, the penultimate paragraph of the determining officer's reasons reads as follows:

“With regards to the hourly rate claimed I am aware that Counsel has persuaded the Costs Judges in Chapman and others (SCCO ref 100/16) that rates of £80/hour and up to £120/hour are reasonable for work before this court. Since then the Costs Judges have been made aware that hourly rates of £50 per hour are regularly claimed by Counsel for drafting Advice and Grounds of Appeal. I maintain the view the £50/hour is reasonable in this particular case.”

5. The senior costs judge was indeed ‘made aware’ of the rates claimed by some counsel in Court of Appeal cases. In his decision in the case of R v Day (190/19), Andrew Gordon-Saker noted:

“23. Mr Greenhill did produce, at Mr Taylor's request, a bundle of documents relating to the 11 cases referred to in Mr Greenhill's written reasons where counsel had claimed hourly rates of between £50 and £75. Anybody involved in the assessment of costs on a daily basis will see a wide range of rates claimed for similar work.

24. Of the 5,000 payments made by Mr Greenhill's section since 1st January 2017, 40% of the overall total have been disallowed on assessment. The assessment of costs requires the assessor to allow the reasonable rate, not to fix the going rate. It may well be that if only 60% of the costs claimed are being allowed some

counsel may be moderating their claims to the rates that they think will be allowed.”

6. In a decision called R v Brace (19CRI0139) I set out the above paragraphs before saying:

“16.I would respectfully endorse the comments regarding the fixing of a going rate. There is no real market force in the rates allowed for the fees of criminal practitioners. Privately paid work is much more remunerative than publicly funded work but, for the reasons given in Day, a direct comparison is inappropriate. There is only one source of publicly funded work and so if it becomes known as to what rate will be allowed on assessment by that source, there will be many who simply claim that rate to ease claims through. That does not mean that such figures are necessarily any guide to what is reasonable remuneration, but simply a de facto fixing of an hourly rate rather than considering the reasonable remuneration for the particular case.”

7. Given that the written reasons in this case were produced before the case of Day was heard, it is not surprising that the hourly rate of £50 per hour was considered to be reasonable in this case. It is a little disappointing that, by the time the reasons were forwarded to counsel, there had seemingly been no review of whether that approach was still appropriate. It appears that, notwithstanding what is said in the written reasons that appropriate hourly rates are considered on a case-by-case basis, it is in fact something of a policy to allow £50 per hour and no more. Counsel indicated to me that he has not had a single fee approved at the rates that he has claimed and nor, to his knowledge, had anyone else in his Chambers. The rates claimed by counsel appear to be more or less the same in every case and there comes a point at which a refusal to make any adjustments to the rates allowed to counsel by the determining officer in the face of numerous successful appeals before different costs judges is to be deprecated.
8. This case involved numerous offences under the Modern Slavery Act 2015 and resulted in Rafael being sentenced to several concurrent sentences of 10 years' imprisonment. No more needs to be set about the fact that these were serious offences and placed a weight of responsibility on counsel's shoulders as a result. In my view, the rate claimed of £100 per hour represents reasonable remuneration for counsel's work in this case and the £50 per hour allowed by the determining officer does not.
9. I have seen the advice on appeal and the grounds of appeal. Counsel informed me that at the time there were no sentencing guidelines to be applied and as such a trawl through potentially relevant authorities was required in order to produce the advice and grounds of appeal. The fact that there was very little case law that bore upon the sentences does not mean that the research was not time-consuming. It does however impact upon the drafting time since a dearth of authority inevitably shortens the submissions that can be made.

10. Counsel said to me that if he could have taken only six hours to produce the work then that is all the time that he would have spent. Whilst I have no reason to think that counsel is not a busy practitioner, the argument that a professional only ever spends the amount of time that is reasonable is not one that carries a great deal of weight in itself. There have been eight full time costs judges (as well as many others) for many years whose responsibilities include determining how reasonable is the amount of time a professional has spent on various tasks. The range is considerable but, in my experience, most professionals will defend the time spent as being the least they could reasonably have utilised.
11. Having looked at the document produced and considered counsel's submissions at the appeal hearing, I take the view that the determining officer's decision to reduce the amount of time allowed to 6 hours was a reasonable one representing something approaching a day's work.
12. Therefore, I allow this appeal the extent of the hourly rate but uphold the determining officer's decision in relation to the amount of time claimed. Consequently, I direct the determining officer to increase the payment to counsel in respect of his work in this case to £600 plus VAT. Since counsel has been successful, at least in part, on his appeal, he is entitled to his costs of the appeal.

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