

## **GFS Appeals Committee**

### **R-v- A and others**

#### **1. Introduction**

This case concerns the prosecution of A and others.

Prosecution advocates were :-

Both appellants have appealed the CPS determination of the graduated fee paid for this trial.

The CPS determined that this trial should be paid as a standard base fee case. Both appellants have appealed that decision and have maintained that the case should have been paid as an enhanced base fee.

The issue in dispute relates to a Notice of Additional Evidence that was served by the CPS on 5<sup>th</sup> May 2016 and a quantity of telephone call data served electronically as part of that notice. The material was incorrectly paginated. The appellants' argument is that this gives the material the status of served documentary exhibits and that the material should be counted as pages of evidence and added to the page count.

The CPS maintain that the pagination was a mistake and that the material should be remunerated as per the rules regarding electronically served evidence and paid as reasonable time spent viewing at the GFS hourly rate. The base fee therefore applicable would be the standard fee.

The Fees Appeal Committee have previously considered the matter and requested further details in relation to the service of the material. That information has been provided by the paralegal officer. The paralegal officer, having spoken to junior counsel for the prosecution responded as below:

*"Counsel just called me back. He said that there were discs previously served before he got involved. But the evidence was not in any order. So he sat down with the officer in the case and compiled evidential data. He put the pdf version on a disc and that was served on the defence."*

The Committee has been re constituted and has reviewed the appeal afresh having considered the following documents:-

- GFS Manual of Guidance and annexes
- The application for re determination and updated application by way of response to the final written reasons
- Case update from counsel

- Draft NAE's , early and later versions
- CPS final written reasons.

## 2. Findings

The Committee find that the relevant guidance in relation to this matter is set out in the Manual of Guidance at paragraphs 61 – 71 and 74. The Committee find that although the way in which the 'evidential data' was treated is likely to have been an error and not in accordance with CPS Guidance, the way in which it was served and then treated by the CPS means that it was evidence that did not fall within paragraph 74(b). Support for that comes from the fact that it was served twice but the second version was not the same as that which had previously been served. In those circumstances it should be treated as PPE and importantly it has been recorded as if it was PPE.

The Fees Appeal Committee do not in their findings set a precedent for other appeals but have decided the issue on the particular and unusual circumstances and facts of this case and therefore this appeal is allowed and the appellants should be recompensed for the difference in the amount between a standard base fee and an enhanced base fee.

The Fees Appeal Committee recommend that those who complete NFE front sheets and what are sometimes called 'Final Page Count sheets' follow the clear guidance that already exists to distinguish between material served within paragraph 74(b) of the Guidance. .

Fee Committee convened on 17<sup>th</sup> July 2017

24 August 2017