

THE GRADUATED FEE SCHEME APPEAL COMMITTEE

APPEAL OF COUNSEL INSTRUCTED FOR THE PROSECUTION IN THE CASE OF [REDACTED]
AND OTHERS

DECISION

1. INTRODUCTIONS

This appeal is brought by [REDACTED] and [REDACTED] who prosecuted the above matter. The fee scheme applicable to the work undertaken is the Crown Prosecution Service Graduated Fee Scheme. The issue in dispute is payment for work in relation material served on disc and the treatment for that material under the GFS arrangements and the subsequent fee applicable for the main hearing, in this case a trial.

2. BACKGROUND

The case was listed for trial on [REDACTED] [REDACTED] and lasted 14 days. The defendants were charged with conspiracy to commit armed robberies. Key in all such cases was the telephone attribution evidence.

The Panel have been provided with the following documents: GFS Manual of Guidance, letter from [REDACTED] dated 20th October 2015, Request for Re Determination dated 9th November 15, Final Written Reasons dated 11th November 15.

Both parties rely on paragraph 74 of the CPS GFS Manual of Guidance. The key material served which would determine the base fee paid, amounted to: 100 pages of statements, 340 pages of exhibits and 2,343 items created and served electronically. The prosecution GFS arrangements no longer rely on an exact page count, with the number of pages of evidence split into two bands: standard or enhanced. For the category of offence in this case, the split or break between the two is 2500. So the issue is whether the 2343 items served electronically should be treated as a page under the scheme.

Copied below is the relevant extract of the Manual of Guidance.

74. Evidential material which is produced and served in an electronic format, such as images from a computer copied to disc or documents scanned on to disc, should be dealt with as follows:

- a. Witness statements and records of defendant interviews formally served in evidence will always be counted as pages. If paper pages of exhibits are scanned and produced on disc for convenience, they should be counted as pages for the purpose of remunerating the advocate.
- b. If, however, electronic media material, such as telephone data and billing, a copy of a computer hard drive or a CCTV recording, is served on disc, the advocate is paid for any reasonable time spent viewing the material at the appropriate GFS hourly rate. The advocate must provide detailed work records of all work undertaken in the case highlighting that work which relates solely to the review of the electronic material.

Material that does not qualify as a page under paragraph 74(a) can never be treated as a page even if it is subsequently printed off in to paper format. However, any page that is printed directly from a disc and copied for use by a jury during an effective trial will be added to the page count subject to the principle that the same page will only be counted once.

3. THE CONSIDERATIONS OF THE PANEL

- Paragraphs 74a and 74b of the guidance are clear – 74a deals with paper pages of exhibits which are scanned and produced on disc for convenience and that they should be counted as pages. 74b deals with electronic media material where the advocate should be paid for any reasonable amount of time spent viewing the material at the appropriate GFS hourly rate.
- The main point relied on by the appellants is that 13 pages of excerpts of the 2343 paginated electronic reports were served as used material and that these were ‘identical in both form and substance’ to the pages not included in the page count.
- We find that this weakens not strengthens the appellants’ case – although identical they were treated separately and served formally as used material.
- We agree that the CPS was correct to find that this material should be considered under 74b not 74a and that counsel should be invited to provide a log of the hours taken to consider the material.

4. RULING

For the reasons set out above the appeal fails. This is a unanimous decision of the Committee.

However the Committee would wish to take this opportunity to make some additional comments .The role of the Committee is to apply the CPS fee schemes but if there are matters which the Committee feel should be reviewed, the Committee can make comment and request that the CPS review the comments and take the matters forward with the Bar Remuneration Committee.

Three matters of concern for the Committee are:-

- Delay – we are concerned that the last communication from the CPS with the advocates appears to have been by letter of 11th December 2015. These papers did not reach the committee until 1st July. It is important that these appeals need to be resolved much more speedily. The CPS should review with the Bar Remuneration Committee the current appeal arrangements to ensure timely resolution of any appeal.
- Drafting – the first paragraph of the [REDACTED] letter of 20th October 2015 indicates that it ‘sets out the final position of [REDACTED] on this matter.’ The Committee consider that it should be clear that the next step, if counsel is in disagreement , is the Appeal Committee and an expectation of when the matter can be considered .At that stage counsel should still be invited to provide work records and submit an amended bill , pending the outcome of the appeal .If the CPS seek to rely on previous rulings of this Committee then the full ruling should be included in any correspondence with the appellant , the details of the counsel party to the ruling removed .The Committee also consider that all rulings should be published on the CPS Intranet and website for all parties to have sight and access.
- In relation to evidence and supporting material served electronically, and with the development of the digital file, the Committee consider this is the time to review current guidance in relation how material is served, treated and how such material should remunerated in the future. The CPS with other agencies and the Bar Remuneration Committee should conduct a review.

The Committee invite counsel to submit work records for the reasonable time viewing material in accordance with paragraph 74b.

[REDACTED] Attorney General's Office

[REDACTED]

[REDACTED] Crown Prosecution Service

Date 26 September 2016