

GFS Appeals Committee

Operation [REDACTED]

Appeal by [REDACTED] [REDACTED]

1. Introduction

Counsel appeal to the Appeal Committee on the following issue: the correct payment of telephone records served in electronic format.

The issue in this case is in relation to approximately 10,000 notional pages of telephone download material served in evidence that was included on a Notice of Additional Evidence served on 5th September 2017. The service of the material in evidence was at the direction of the Judge. The CPS have stated that the Notice of Additional Evidence makes it clear that the 10,000 notional pages relates to telephone download material and that this is remunerated in accordance with paragraph 74b) of the GFS Manual of Guidance , as time reasonably spent viewing the material.

Counsel have raised in their response to the written reasons the cases of R v Furniss & Ors (2015) 1 Costs LR 151 and Lord Chancellor v Edward Hayes LLP & another (2017) EWHC 138 (QB). These are both in relation to the remuneration of defence advocates.

Both counsel have been asked to provide work records to demonstrate the number of hours of work they have undertaken on the telephone records , in order that they can receive payment at the GFS hourly rate , in accordance with paragraph 74b) of the Manual of Guidance. No work records have thus far been received.

The following documents were provided to the Appeal Committee:-

- Notice of Appeal
- Final Written Reasons , initial and second
- Notice of additional evidence
- Response to Final Written Reasons

Operation [REDACTED] concerned allegations including conspiracy to kidnap, blackmail and conspiracy to commit false imprisonment. The case was resolved by way of two trials, the first between 21st August and 24th August 2017 and the second trial heard between 30th August 2017 and 14th September 2017, at [REDACTED] Crown Court.

On 6th April 2017 discs containing mobile phone data were served by way of a Notice of Additional Evidence. At this stage the evidence total was shown as 574 pages of statements and 1140 pages of exhibits, total number of pages 1,714. This page count remained throughout the first trial, when some defendant's pleaded guilty and the remaining defendants were set down for a second trial.

At the second trial, starting on 30th August 2017, admissions were made about the telephone data in order that it would not be contested. On 5th September HHJ [REDACTED] ordered that the prosecution provide a notional page count of the telephone evidence served on disc and add it to the pages of prosecution evidence. The Crown duly did this and provided a Notice of Additional Evidence dated 5th September 2017. At that stage the page count excluding the electronically served evidence was: statements 609, and exhibits 1,265. The total number of pages 1,874. The Notice of additional evidence made it clear that the additional material served was mobile phone data and contained the following script, to ensure that the total was a notional page count in accordance with CPS Guidance.

‘Additional pages of prosecution evidence:

Exhibits pages 1176 to 11265 represent mobile phone data already served as evidence on disc. The Crown was directed to add these to the page count by HHJ [REDACTED] 1st September 2017. For avoidance of doubt, The Crown has not actually served printed copies of the pages in question.’

Counsel has been paid the graduated main hearing fees in this case at the standard rate, 2,500 pages of evidence being the cut-off point to receive an enhanced fee.

The basis of this appeal is in relation to the second trial and that the telephone evidence should be added to the page count and the correct fee should be an enhanced main hearing fee. In support of that contention counsel rely on the NAE notice signed by the CPS and dated the 5th September 2017 and that they submit that document gives a the page count which counsel rely upon as a record off the total pages and believed that it would be honoured.

The CPS position is that the payment of electronically served evidence is dealt with in the Manual of Guidance at paragraph 74. Paragraph 74b) which states that telephone data billing is not added to the page count and is remunerated as time spent reasonably viewing that material.

In support of that the CPS rely on the Notice of Additional Evidence, which the CPS say is clearly a notional page count.

The relevant section of the GFS Manual of Guidance is below.

Paragraph 74

“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 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. “

2. Findings

The Committee considered the matters advanced by counsel and the relevant paragraph in the Manual of Guidance and are content that paragraph 74 B applies. In accordance with the Appeal Committee’s Terms of Reference, the Committee have applied the guidance above and do not base their decision on cost judge rulings in relation to the defence scheme. It is clear that when the Final NFE/PPE sheet is looked at as a whole that the pages were not intended to count towards the PPE under the Prosecution scheme.

The Committee concludes that the material served in evidence should be treated in accordance with paragraph 74b and work in relation to that should be remunerated at the GFS hourly rate upon submission of work records. Therefore the appeal fails. The decision of the Committee was unanimous.

The Fees Appeal Committee convened to consider the appeal on 13th November 2018.