

## GFS Appeals Committee

R-v- [REDACTED]

Appeal of [REDACTED], leading and [REDACTED]

### 1. Introduction

This case was dealt with at four main hearings between October 2014 and September 2015.

The prosecution advocates were [REDACTED], leading counsel and [REDACTED], junior counsel.

Both appellants have appealed the CPS determination of the graduated fees paid.

The CPS determined that the three main hearing base fees, namely: the cracked trial 5<sup>th</sup> November 2014, the trial 10<sup>th</sup> November 2014, the cracked trial 2<sup>nd</sup> September 2015 and trial 8<sup>th</sup> September 2015 should be paid as a standard base fees. Both appellants have appealed that decision and have maintained that the case should have been paid with an enhanced base fee.

The disputed evidence in this case was served electronically on disc. It was never served on paper. This evidence, if converted into printed format would consist of 3,247 pages. The CPS has stated that this evidence should not be added to the page count and the appellants contend that it should be added to the page count. The final page count in this case as determined by the CPS is 2,103 pages. If the electronically served evidence is added to the PPE it would be 5,349 pages. This figure has been erroneously, in the view of the CPS, stated on the Notice of Additional Evidence dated 16 April 2015. The page cut off for the enhanced fee for this offence category is 2,500 pages.

The CPS maintains that the electronically held evidence should be claimed at the hourly rate in accordance with the guidance as set out in Paragraph 74 of the CPS Graduated Fee Manual of Guidance.

The appellants have submitted that the electronically held evidence should be paid as pages because it falls within the definition of paragraph 74a of the Manual of Guidance, and that the evidence is no different to any other class of documentary exhibit and such as paginated reports and is not telephone data or billing.

The appellants further state that it cannot have been the intention of paragraph 74b) of the Manual of Guidance to place this material outside of the page count in accordance with paragraph 74a), as paragraph 74b) only intends to place large amounts of irrelevant material outside of the page count as stated by paragraph 74a).

The position in relation to the remuneration of electronically held evidence is set out in paragraph 74 of the CPS Graduated Fee Manual of Guidance, and states -.

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 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.

The CPS submit paragraph 74a, details that witness statements, records of defendant interviews, and paper documents that have been scanned for the sake of convenience will be added to the page count. There is no provision within this guidance to allow for documentary exhibits that have been created electronically and only ever existed in electronic format to be added to the page count, whether they are telephone billing data or paginated reports.

The CPS further submits that the Notice of Additional evidence clearly describes the disputed material as 'Disc containing full downloads of telephones, which the CPS would argue is clearly material that is covered by paragraph 74b) of the Manual of Guidance.

The CPS also take the view that the assertion by the appellants that paragraph 74b) is only intended to relate to large amounts of irrelevant material is incorrect. Paragraph 74a) details what evidence can be added to the page count and paragraph 74b) states that material such as telephone data and billing is not included in the page count. It is not meant to be an exhaustive list. Therefore, even if they accepted the appellant's argument that the material was not telephone data the CPS would still submit that this was electronically held material to be remunerated in accordance with paragraph 74b. Paragraph 74 should be read in its entirety to determine how material should be remunerated.

The Fees Appeal Committee has considered the following documents before arriving at their decision:-

- Notice of Appeal
- Full written reasons
- The Notices of Additional Evidence
- CPS GFS Manual of Guidance

## 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 and which is clear. The material in dispute that was served in evidence was only ever served electronically and bearing that in mind as well as its content it is in our view 'electronically media material within the meaning of paragraph 74(b)'. This is clear from the NAE sheet dated 5<sup>th</sup> November 2014 which itemises the electronically served material as being 3247 pages of the total referred to in the updated exhibit page count of 4298. In our view therefore for the purposes of the calculation of the PPE the 3247 pages are not to count. The material served electronically can be remunerated at the GFS hourly rate for reasonable time spent viewing but cannot be treated as PPE. Therefore the appeals are dismissed.

## 3. Other issues

The Fees Appeal Committee noted that the appeal relates to hearings some time ago but have been informed this was due an appeal on a similar point awaiting determination which held off the consideration of this appeal.

Fees Appeal Committee convened to consider the above appeal on 17<sup>th</sup> July 2017.

24 August 2017