

GFS Appeals Committee

R-v- [REDACTED]
Appeal brought by [REDACTED] and [REDACTED]

The CPS Fees Appeal Committee met on 24th January 2018 and considered the above matter.

[REDACTED] and [REDACTED] were charged with murder and possession of drugs with intent to supply. There was a further case against [REDACTED] and [REDACTED]. The cases were heard at [REDACTED] Crown Court. The drugs case of [REDACTED] and [REDACTED] was resolved by a cracked trial on [REDACTED]. The case of [REDACTED] and [REDACTED] was resolved by a further cracked trial on [REDACTED]. The murder indictment for [REDACTED] and [REDACTED] was resolved by a trial in [REDACTED].

The issue which the Committee has been asked to consider is the correct payment of electronically served evidence in accordance with the CPS GFS Manual of Guidance.

The CPS submits that the number of served pages of evidence in the case was 927 pages. The appellants submit that material served on disc should be treated as pages for the purposes of remuneration and added to that page count. If treated as pages that material would amount to 8,465 pages.

The basis of the appeal is that in advance of the trial the defence advocates made an application to the Judge that the electronically held evidence should be added to the page count, or the trial would have to be vacated. As a result of the application a Notice of Additional Evidence dated 8th September 2013 was prepared showing the page count as 9,392 pages. The page cut off for counsel to receive an enhanced base fee rather than a standard base fee in this case is 5,000 pages.

The appellants have submitted that the contents of the disc served under the afore mentioned Notice of Additional Evidence are documents falling to be added to the page count under paragraphs 63 b and c of the Manual of Guidance, as their status is as documentary exhibits.

During proceedings those defending were unable to view a copy of the disc with their clients who were in custody and therefore a paper copy of the contents of the disc was subsequently served. It is submitted that the material was central to and fundamental to the Crown's case. That point is not challenged and it does not fall for the Committee to make a decision of relevance.

The CPS position in relation to electronically served material is that the provisions of paragraph 74 of the Manual of Guidance ["MOG"] apply. It is not intended to repeat the relevant section of the MOG in this ruling. In summary the CPS submit the fact that the material was subsequently printed into hard copy does not affect the decision made as the above paragraph specifically states that material that is not listed in paragraph 74 a can never be treated as a page even if it is printed off.

The CPS go onto submit that the Notice of Additional Evidence was completed in error and contrary to CPS guidance and that any work relating to that material should be paid at the GFS hourly rate for reasonable viewing time.

The Committee have had the benefit of sight of the NAE in question.

1. Findings

Supplementary CPS guidance directs that if an order of a court is made to paginate such material, the Notice of Additional Evidence should state the following:-

'The number of pages of served evidence in this case is x, Included within the list of exhibits is digital evidence, which the prosecution estimates would consist of X pages if printed'

This guidance was developed to assist defence practitioners when making claims, the aim being to provide a notional page. In this case that was not done and therefore the Committee rely on the wording of the Notice of Additional Evidence dated 8 September 2016 which states:-

"For Graduated Fee Scheme purposes – the updated page count is now; statement 332, exhibits 8918."

In light of that statement the Committee, in this particular case, uphold the appeal. The appropriate additional payment should be made.

2. Other issues

The Committee however expressed concern regarding the current guidance and invited the CPS to review the relevant sections of the MOG relating to the remuneration of electronic material and the definition of what constitutes a page of evidence.

CPS Fees Committee