

GFS Appeals Committee

R-v- [REDACTED]

Appeal of [REDACTED]

1. Introduction

The two defendants were charged with Manslaughter and Perverting the course of Justice. The trial at [REDACTED] Crown Court began on 4th October 2016 and concluded on 9th November 2016.

The Prosecution advocates were - [REDACTED] leading counsel and [REDACTED] Junior counsel.

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 this case relates to the mobile phone download evidence, totalling 5799 pages. Initially only some of the download was served in evidence, with the remainder served as unused material. The defence submitted that the whole download should be served as evidence. The Judge agreed with the defence submission and made an order that the whole download be served as evidence. In addition the Judge ordered that the material be paginated and the number of pages recorded on a Notice of Additional Evidence.

The Judge has provided a letter to state that the intention of her order to paginate the download material was to ensure that Prosecution Counsel were paid an enhanced base fee and that Counsel would be remunerated on the basis of page count rather than time spent viewing the material.

The CPS has paid this case as a standard base fee case applying the guidance set out in the CPS Graduated Fee Scheme Manual of Guidance at paragraph 74 and evidence served in an electronic format. The relevant paragraph is copied below.

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 a 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 a 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 Fees Appeals Committee has considered the following documents before arriving at their decision:-

- GFS Manual of Guidance
- Final written reasons dated 20th March 2017
- Application for redetermination dated 2nd April 2017
- Note for taxation dated 18th and 19th December 2016
- Notice of Additional Evidence dated 31st October 2016
- Letter from [REDACTED], CPS lawyer, dated 16th December 2016
- Letter from the Trial judge, dated 13th December 2016
- Witness statement of [REDACTED] exhibiting relevant material.
- Judgement in LCC V SVS

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.. Whilst the Trial Judge had no locus in the remuneration of Prosecution advocates and the application of a Prosecution fee scheme, which was agreed with the Bar Remuneration Committee, the reality is that the CPS complied with the Judge's order by serving a Final Page Count document which did not specifically make reference to fact that some of the material had been served electronically. It was in our view open to the CPS to do so and still to have complied with the order of the Judge. Indeed there is internal CPS Guidance which would have allowed them to do so. It is clear from the letter from the Reviewing lawyer that his intention was to treat the material as falling within the Prosecution page count and not paragraph 74b of the Manual of Guidance and that appears to have been a deliberate decision by him. In those unusual circumstances it would not, in our view, be fair to withhold the enhanced fee Therefore the appeals are allowed.

The Committee make clear that each case will turn on their own facts as to whether the Final Page Count form represents the reality or not. Here we placed particular reliance on the fact that the CPS lawyer intended to and did then purport to treat the electronic material as not falling within paragraph 74b. We appreciate that if High Court Judges make orders which are, in whole or in part, outside of their jurisdiction then ordinarily the CPS will still comply with them. This is especially the case when

this all takes place in the full glare of the public (including the families of victims) and the press in serious cases. We recommend, however, that the issue of Judges making orders about the remuneration of advocates, and particularly prosecution advocates, should be addressed with the SPJ as well as being robustly opposed by the Prosecution advocate.

The Fees Appeal Committee convened to consider the appeals on 17th July 2017

24 August 2017