

GFS Appeals Committee

R-v- [REDACTED] and others

Appeal of the refusal of the CPS to pay correct payment of electronic evidence.

Decision

1. Introduction

The case concerns a case of conspiracy to defraud heard at [REDACTED] Crown Court.

The Prosecution advocates were Mr [REDACTED] and [REDACTED].

The case was an offence category F under the Graduated Fee Scheme. The cut off point for an enhanced fee is 2,500 pages. The CPS determined that this trial should be paid as a standard base fee case. The appellants have appealed that decision and maintain that the case should have been paid as an enhanced base fee on the basis that material was served on disc during the trial.

The issue is the correct remuneration for the material that was served on disc during the trial. Some material from the disc was served in the NAE as pages, whilst other material including mobile telephone downloads was not. It is contended that remuneration for all the material served on disc should be remunerated for; the only difference in the material served as pages and the mobile telephone downloads was the printing from the disc and the scanning of the material to be served.

The CPS has submitted that remuneration for the mobile telephone download be paid as reasonable viewing time in line with paragraph 74(a) of the GFS Manual of Guidance. The appellants submit that it would be almost impossible to do this, due to practical difficulties in recording the time for viewing such material when the work involved piecing the different strands of evidence together to construct a chronology of the case for presentation to the jury. The appellants also submit that the late service of this evidence by the CPS would have made viewing and the recording of the time taken more difficult.

The appellants further submit that the case is analogous one which the CPS Fees Appeal Committee found in favour of on 24 January 2018. This case considered whether electronically served material should be 'treated as pages'.

It is accepted by the CPS that this material was served very late at the start of the trial following an order from the Judge

The CPS has subsequently accepted that the bank statements and oyster reports contained on the disc and served in the NAE were documentary exhibits in accordance with the guidance and payable in accordance with paragraph 74(a). These documents were 836 + 121 pages respectively. The accepted page count is therefore 1344 pages of evidence and below the 2,500 pages required for an 'enhanced' fee.

The CPS maintains that the telephone download material contained on disc cannot be said to meet the criteria as set out in paragraph 74(a). The documentary material served did not consist of witness statements, records of defendant interviews, nor was it paper pages of

exhibits scanned for the sake of convenience. Paragraph 74b) specifically refers to telephone data; the billing of such being remunerated by way of time spent viewing the material. The CPS therefore submits that the appellants should be remunerated in this way.

The Appeals Committee have considered the note on taxation dated 2 October 2018, a further note on taxation dated 5 October, a further note on taxation (2) dated 18 October 2018, a written reasons letter from [REDACTED], ABM, CPS West Midlands dated 15 January 2019, a Response to CPS letter of 15 January dated 29 January 2019 and the relevant guidance as set out in the Graduated Fees Manual of Guidance dated 5 February 2018.

2. Findings

The committee find that the relevant guidance in relation to this matter is set out in the Manual of Guidance at paragraphs 74 and paragraph 62 and 63, reproduced below for ease of reference.

Electronic Material

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.

Pages of Prosecution Evidence

62. Only pages formally served in evidence and copied to all parties either as part of the sending bundle or subsequently served under a written notice of additional evidence (NAE) can be counted, subject to paragraphs 66-68.
63. The pages of prosecution evidence to be counted are:
- a. witness statements;
 - b. documentary exhibits including defendant interviews;

- c. statements and documentary exhibits served under a Notice of Additional Evidence;
- d. photographs (where more than one photograph is copied on to one page, it is the number of pages, not the number of individual photographs that is counted);

64. Pages that are EXCLUDED are:-

- a. title pages and lists of documents (e.g. front sheets on NAEs, list of witnesses and exhibits);
- b. pages of unused material;
- c. pages of bad character material which are not formally served under a Notice of Additional Evidence;
- d. pages relating to hearsay applications and special measures applications
- e. defence witness statements and expert reports served on the prosecution;
- f. jury bundles;
- g. Material excluded by virtue of electronic material guidance at paragraphs 74-76.

The committee also considered the CPS Fee Appeal Committee finding dated January 2018. The committee found that their concerns raised regarding the Guidance, the remuneration of electronic material and the definition of what constitutes a page of evidence had been addressed. This resulted in the Manual of Guidance being updated in February 2018 and further clarification being issued in Fees bulletins 2 of 2018 and 3 of 2018.

The Committee found that that it is clear from these documents as to what constitutes a page count. The inclusion of mobile telephone downloads should not be classed as such for the purposes of remuneration and in accordance with paragraph 74b) of the manual of guidance. The Committee therefore finds that this case remains at the standard fee rate.

Other

The Committee found that whilst served late, the NAE in question did not initially seek to draw out the distinction as to what constituted pages and what did not. This was set out later. The committee sought to remind CPS staff of the need to ensure that what is regarded as a page for remuneration purposes is recorded at the time the NAE is served, in line with agreed Guidance and not contemporaneously.

Date – 27 February 2019