Neutral Citation No. [2022] EWHC 1129 (SCCO)

Case No: T20200161

SCCO Reference: SC-2022-CRI-000001

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 12/05/2022

Before:

COSTS JUDGE LEONARD

REGINA (MACMILLAN CANCER SUPPORT)
v
TOOGOOD

Judgment on Appeal under Regulation 10 of the Costs in Criminal Cases (General) Regulations 1986

Appellant: **Edmonds Marshall McMahon (Solicitors)**

The appeal has been successful for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £4,700 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

....

COSTS JUDGE LEONARD

Costs Judge Leonard:

1. This appeal concerns the assessment by the Legal Aid Agency's Determining Officer of the costs due to the Appellant, Macmillan Cancer support, under a costs order made on 26 August 2021 by Mr Recorder Tait under section 17 of the Prosecution of Offences Act 1985.

2. Section 17(1), insofar as pertinent, provides:

> "… the court may… in any proceedings in respect of an indictable offence… order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings."

3. There are similar provisions at sections 16 and 16A of the 1985 Act for the payment out of central funds to defendants to criminal proceedings. A notable difference is that the Lord Chancellor has never, in respect of orders made under section 17, sought to exercise the statutory power conferred on the Lord Chancellor by section 20 of the 1985 act to restrict, by regulations, the amount recoverable.

4. The policy behind this was outlined in evidence for the Lord Chancellor in *R (Law Society) v Lord Chancellor* [2010] EWHC 1406 (Admin), as referred to at paragraph 65 of the judgment of Elias LJ:

> "… Ms Albon in her witness statement has identified a number of reasons why the Secretary of State has chosen not to cap private prosecutors' costs in the same way as defendants' costs. The Lord Chancellor took the view that it might deter private prosecutions if the claimants were to be so limited and that would be against the public interest. Some private prosecutors conduct prosecutions on a fairly regular basis. This will include a number of charities, such as the RSPCA. They will need to recover expenditure close to actual levels, otherwise they would be out of pocket, and that in turn would deter them from bringing such prosecutions.…"

5. Part III of the 1986 Regulations governs the assessment of costs paid out of central funds. Regulation 5 sets out the mechanism for the assessment of the costs awarded:

> "(1) Costs shall be determined by the appropriate authority in accordance with these Regulations.
>
> (2) Subject to paragraph (3), the appropriate authority shall be…an officer appointed by the Lord Chancellor in the case of proceedings in the Crown Court…
>
> (3) The appropriate authority may appoint or authorise the appointment of determining officers to act on its behalf under these Regulations in accordance with directions given by it or on its behalf."

6. Criteria for the assessment of costs awarded out of central funds are set out at Regulation 7, which insofar as pertinent reads:

> "(1) The appropriate authority shall consider the claim and any further particulars, information or documents submitted by the applicant… and shall allow costs in respect of—
>
> (a) such work as appears to it to have been actually and reasonably done; and
>
> (b) such disbursements as appear to it to have been actually and reasonably incurred.
>
> (2) In calculating costs under paragraph (1) the appropriate authority shall take into account all the relevant circumstances of the case including the nature, importance, complexity and difficulty of the work and the time involved.
>
> (3) Any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.
>
> (4) The costs awarded shall not exceed the costs actually incurred.
>
> (5) … the appropriate authority shall allow such legal costs as it considers reasonably sufficient to compensate the applicant for any expenses properly incurred by him in the proceedings…"

7. As I have indicated, Regulation 10 provides for an appeal from the appropriate authority to a Costs Judge.

8. Part V of the 1986 Regulations governs the allowances to be made to witnesses. Regulation 16, insofar as pertinent, reads:

> "Where, in any proceedings in a criminal cause or matter in… the Crown Court… (a) a witness attends at the instance of the accused, a private prosecutor or the court…
>
> the expenses properly incurred by a witness referred to in sub-paragraph (a)… shall be allowed out of central funds in accordance with this Part of these Regulations, unless the court directs that the expenses are not to be allowed out of central funds."

9. The remainder of Part V is concerned with the amounts to be paid to various categories of witness in various circumstances.

10. The Determining Officer has also referred to Rule 45.2(7) of the Criminal Procedure Rules:

> "On an assessment of the amount of costs, relevant factors include—
>
> (a) the conduct of all the parties;
> (b) the particular complexity of the matter or the difficulty or novelty of the questions raised;

> (c) the skill, effort, specialised knowledge and responsibility involved;
> (d) the time spent on the case;
> (e) the place where and the circumstances in which work or any part of it was done; and
> (f) any direction or observations by the court that made the costs order.…"

11. The Determining Officer's written reasons refer to a number of factors to be taken into account on assessment, as listed at paragraphs 1.11 and 1.12 of TONG:

> "(a) the importance of the case, including consequences to reputation and Livelihood
> (b) the complexity of the matter
>
> (c) the skill, labour, specialised knowledge and responsibility involved,
>
> (d) the number of documents prepared or perused, with regard to difficulty and length
>
> (e) the time expended; and,
>
> (f) all other relevant circumstances including travel and hotel expenses where appropriate…
>
> … (a) regional variations in the expense to solicitors of conducting litigation, and
>
> (b) the assessment of the weight of the case by the Judge who tried it or those who participated in it."

12. The Appellant refers me to Part 2 of the Practice Direction (Costs in Criminal Proceedings) 2015 (as amended) at paragraph 2.6.3:

> "For the purposes of an order under Section 17 of the Act the costs of the prosecutor are taken to include the expense of compensating any witness for the expenses, travel and loss of time properly incurred in or incidental to his attendance."

13. I have also taken note of paragraph 1.4.1 of that Practice Direction:

> "If the court does not fix the amount of costs to be paid out of central funds, the costs will be determined in accordance with the General Regulations by the appropriate authority."

14. The "General Regulations" referred to at paragraph 1.4.1 above are the 1986 Regulations.

The Background

15. Mr Fairbrother for the Appellant explains that the Appellant is a registered charity which provides specialist health care, physical, financial and emotional support to people affected by cancer. The Appellant relies upon donations from supporters for 99% of its funding. Most of the donations received by the Appellant are small donations, so small donations and the goodwill and enthusiasm behind them are

important. Fraud undermines that goodwill and enthusiasm. Preventing it, and being seen to act against it, is a priority for the Appellant.

16. The Appellant has privately prosecuted defendants for several years, having previously, says Mr Fairbrother, received insufficient support from state prosecution authorities. The Appellant appoints specialist solicitors, Edmonds Marshall McMahon ("EMM"), along with counsel, to conduct prosecutions just as the State instructs solicitors and counsel for state prosecutions.

17. On 2 October 2020, the Appellant commenced a private prosecution against Rebecca Toogood ("the Defendant") who was responsible in October 2019 for collecting approximately £1,500 raised for the Appellant at a fund-raising event. The case against the Defendant was that she had kept the money for herself.

18. On 22 June 2021, following a 6-day trial, the Defendant was found guilty of theft and fraud. Mr Recorder Tait sentenced the Defendant to 18 months' imprisonment for the theft and four months for the fraud, to run concurrently, suspended for two years. The Defendant was also ordered to carry out 100 hours' unpaid work and pay £1,500 compensation.

19. Mr Recorder Tait, on sentencing, made these observations:

> "The message has to go out to people who are involved in safeguarding charity money that these offences are serious and that the consequences are serious. Many people give their time and money to raise money for good causes. Macmillan is probably one of the best causes you could imagine…It was collected and entrusted to you. There is a breach of trust…"

20. On making an order for Macmillan's prosecution costs to be paid from central funds under section 17(1) of the Prosecution of Offences Act 1985, he observed:

> "I do not want Macmillan to be out of pocket in any way."

Attendance at the Trial

21. Mr Fairbrother confirms that the Appellant employs two counter-fraud investigators. They are Mr Robert Browell, the Appellant's Counter-Fraud Manager and Mr Lee Dudderidge, the Appellant's Fraud Investigator. Between them, Mr Browell and Mr Dudderidge have over 60 years' experience in investigating fraud. Mr Browell is based in Luton and Mr Dudderidge in Manchester. Between them they cover fraud issues nationwide.

22. Mr Browell, Mr Dudderidge and EMM's case paralegal, Katie Miller, attended Winchester Crown Court on the first day of the Defendant's trial. Each had a distinct role.

23. Mr Browell gave evidence on behalf of the Prosecution on day 1, the only day upon which he attended the six-day trial. Mr Dudderidge attended on day 1 as a representative of the Appellant, to provide instructions and to investigate and address evidential matters if required (and as he in fact did, attending the trial remotely on the third day to

give further evidence). Ms Miller attended on day 1 in person and remotely on day 3 only, to take a note of the evidence and to assist counsel.

The Issues on the Appeal

24. Mr Fairbrother identifies three issues for me to determine on this appeal.

25. The first is whether the Determining Officer was wrong to conclude that the cost of the Appellant's internal investigators' attendance as witnesses at trial, stands to be assessed and paid by the Crown Court which made the section 17 order, and not by the Lord Chancellor through the LAA. The second is whether the Determining Officer was wrong to refuse to compensate the Appellant for the cost of the time expended Mr Dudderidge on day 1 of the trial (as a representative of the Appellant, not as a witness). The third is whether the Determining Officer was wrong to reduce counsel's fees for the trial.

26. Before explaining my conclusions, I should make these observations.

27. I entirely accept the importance of the prosecutions undertaken by the Appellant with a view to ensuring that dishonesty such as that displayed by the Defendant does not undermine the public goodwill and enthusiasm which is a key component of its fundraising capacity. That can properly be taken into account when assessing the importance of the case in accordance with the TONG guidance quoted above.

28. The observations of the trial judge can and should also be taken into account in accordance with that guidance and the provisions of Rule 45.2(7) of the Criminal Procedure Rules.

29. It does not follow that there is a special or separate assessment regime for charities such as the Appellant, undertaking private prosecutions for the very sound reasons given by the Appellant. All of the principles and guidelines referred to by the Determining Officer, including the provision at Regulation 7(3) of the 1986 Regulations to the effect that any doubts as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the receiving party, continue to apply.

30. In my view the stated policy of the Lord Chancellor on private prosecutions by charities reflects that fact that the costs and expenses recoverable under section 17(1) of the 1985 Act by a private prosecutor such as the Appellant will be measured by reference to what it is reasonable to charge for privately funded criminal work. That is what the private prosecutor has had to pay, and it is right for the private prosecutor to expect that such expenditure, insofar as objectively judged reasonable by reference to the criteria I have summarised above, will be recovered.

31. It seems to me, for reasons I shall give, that the Determining Officer's conclusions are more consistent with the mechanistic approach and (where there is any discretion) the more modest rates appropriate to a legal aid assessment than to an assessment of privately funded work. As a result, the amounts that have been allowed to date fall well short of what it is reasonable for the Appellant to recover.

Witness Expenses

32. The Determining Officer does not take issue with the attendance of Mr Browell as a witness on the first day of trial but says in her written reasons first that expenses relating to the attendance at Court by a witness in a private prosecution are, under Part V of the 1986 Regulations, assessed and paid by the Court at which the matter is heard, and second that the attendance of a second investigator (Mr Dudderidge) at trial was unreasonable.

33. I am not quite sure whether the latter observation is meant to apply only to Mr Dudderidge's attendance on the first day of trial (addressed below) or whether it extends to his giving evidence on the third day. If it does, then I would say given the way in which the trial developed (also addressed below) it was inevitable that Mr Dudderidge would be required to give evidence. This was not a luxury indulged in by the Appellant, but a proper response to the requirements of the trial.

34. Turning to the source of payment, Mr Fairbrother submits that the scheme underpinning the 1986 Regulations is that they give the power to a Determining Officer to carry out, on behalf of the court, the assessment of costs awarded under section 17 of the 1985 Act. The Determining Officer's attempt to refer this matter back to the Court to carry out the administrative assessment of the Prosecutors witness costs undermines, he submits, the purpose and scheme of the 1986 Regulations.

35. As to whether witness expenses fall within the costs to be assessed by the Determining Officer, Mr Fairbrother refers to paragraph 2.6.3 of the Practice Direction (Costs in Criminal Proceedings) 2015 (as amended).

36. His submissions can be summarised in this way. The Crown Court has, under section 17 of the 1985 Act, ordered the prosecution costs be assessed in accordance with the relevant regulations. The relevant regulations are the 1986 Regulations. The appropriate authority, in accordance with Regulation 5 (3), is the Determining Officer, who 'shall' determine the prosecution costs, which are defined in the 2015 Practice Direction at paragraph 2.6.3 to include the expense of compensating any witness. It is the duty of the Determining Officer to assess the costs of the private prosecutor, and such costs includes the costs of witness expenditure.

37. I have to agree. The Lord Chancellor was not represented and did not make submissions on this appeal, choosing to rely upon the Determining Officer's written reasons. I cannot identify from those written reasons the rationale behind the Determining Officer's conclusion that part of the assessment of the costs awarded to the Appellant under section 17 of the 1985 Act must be hived off to the Crown Court.

38. Part V of the 1986 Regulations does not prescribe any separate mechanism for the assessment and payment of witness expenses. Nor, applying a reasonably purposeful interpretation to the 1986 Regulations, can I find any good reason to interpret Part V as impliedly imposing what seems to me to be an impracticable and inconvenient dual-assessment arrangement upon any person with the benefit of an order under section 17 of the 1985 Act. The evident intention of the 1986 Regulations is that all of the costs awarded under section 17(1), including witness expenses, should be assessed by the appropriate authority in accordance with Regulation 5.

39. That conclusion is reinforced by paragraphs 1.4.1 and 2.6.3 of the 2015 Practice Direction, which seem to me between them to put it beyond contention first that the witness expenses borne by the Appellant in this case fall within the costs awarded by the Crown Court under section 17, and second that the assessment of all of those costs is the responsibility of the appropriate authority, as represented by the Determining Officer.

40. For those reasons, the costs claimed for attendance at trial as witnesses by both Mr Dudderidge and Mr Browell should be allowed as provided for at Part V of the 1986 Regulations and the rates and scales published by the Lord Chancellor.

Mr Dudderidge's Attendance at the first day of Trial

41. As I have mentioned, Mr Dudderidge attended the first day of trial along with Ms Miller, EMM's paralegal. The Determining Officer, having allowed the costs of the attendance of Ms Miller, took the view that the additional cost of the attendance of a second representative of the Appellant had not been reasonably incurred. She observed that Mr Dudderidge was available to be contacted to provide assistance, as necessary, throughout the hearing.

42. Mr Fairbrother argues that this conclusion does not recognise the realities of a Crown Court trial, which is logistically very difficult for the prosecution.

43. The case paralegal and the Appellant's investigating officer have, he submits, entirely different functions at trial. The paralegal will attend court during the prosecution case; take a note of the prosecution witnesses' evidence; and assist counsel and the court during the hearing with bundles, admissions, witnesses, live links, interpreters (where necessary), photocopying, etc. Ms Miller also, in effect, took on the role of disclosure officer.

44. The investigating officer will be on hand to answer questions about the investigation conducted, obtain further evidence, investigate further evidence disclosed by the defence during trial, and in the case of private prosecutions, be on hand to give instructions.

45. Where a representative of the private prosecutor is due to give evidence, it is not feasible for that officer also to give instructions, provide advice to, or carry out further enquiries, given that he may at times be unable to communicate with the Prosecution's legal representatives.

46. In this particular case, says Mr Fairbrother, hindsight demonstrates the importance of having Mr Dudderidge at court on the first day of trial. Having served a defence statement three months late alleging that her ex-partner stole the charitable proceeds, during cross examination of Mr Browell the Defendant's counsel suggested that the Appellant could not prove that the money was stolen. The Defendant effectively changed her case by suggesting for the first time that the money might not have been stolen at all and might have been resting in one of the Appellant's bank accounts, having been deposited under another name.

47. The Defence produced and relied upon emails, none of which had been provided to the prosecution in advance of trial, purporting to show that funds raised had in fact been

passed to the Appellant in that way. Mr Browell was effectively ambushed with previously unseen material, used to support severe criticism of his investigations, (and subsequently, Mr Dudderidge's investigations) both in cross-examination and in the closing address on behalf of the Defendant. That led to the trial Judge requesting that further searches of the Macmillan database be carried out by Mr Dudderidge whilst Mr Browell gave evidence.

48. As a result Mr Dudderidge was required to speak to and obtain a further statement from an important prosecution witness about emails to which the witness was purportedly a party but denied ever having seen (and which in fact pointed back to the Defendant); to search the Macmillan database and case management systems in response to the new allegations; to produce a further witness statement himself on day 2 of the trial to the results of his further investigations; and to give evidence and be subjected to intensive cross-examination by the Defence on day 3.

49. That was not the end of the matter. The Defence applied to exclude the new evidence. The court refused the application. The Defence also cross-examined Mr Dudderidge about meetings he had with witnesses to take statements and then applied to stay the proceedings as an abuse of process on the basis that the Appellant had influenced their evidence. That too was refused by the Court. Both of those rulings are being appealed to the Court of Appeal.

50. It is not necessary to apply hindsight to understand that it was prudent to have Mr Dudderidge in attendance on day 1 of the trial. The first day of any trial is always important, and depending upon the facts of the case it may be possible to justify the attendance of more representatives than on subsequent days. In many cases (as in this case) there will be the potential for unanticipated developments which may require an urgent response from the client, and as a witness Mr Browell would not have been in a position to supply it.

51. I do not think it is an answer to that to say that Mr Dudderidge could have been contacted if his assistance was needed. In fact his assistance was needed, and he would, one way or another, have had to devote much of his time to day 1 of the trial. It is not consistent with that to disallow his attendance entirely.

52. In any event, my conclusion is that it was well within the bounds of reasonableness to have Mr Dudderidge in attendance on day 1 of the trial. Absent any issue about the time spent by him (which does not seem to be the case) the cost of his attendance should be paid as claimed.

53. For those reasons, this part of the appeal succeeds. The Appellant should be remunerated in the sum claimed for Mr Dudderidge's attendance on the first day of the trial.

Counsel's Fees

54. Annexed to the Determining Officer's written reasons as the following summary of the fees claimed by counsel and the fees allowed:

Date	Hearing	Claimed	Allowed
10/11/2020	1st Appearance	£600	£300
09/12/2020	PTPH	£750	£300
29/04/2021	Trial preparation	£750	0
01/05/2021	Trial preparation	£562.50	0
09/06/2021	Mention	£600	£450
15/06/2021	Brief fee	£3,000	£2,625
16/06/2021	Refresher	£1,000	£450
17/06/2021	Refresher	£1,000	£450
18/06/2021	Refresher	£1,000	£450
21/06/2021	Refresher	£1,000	£450
22/06/2021	Refresher	£1,000	£450
28/08/2021	Sentence	£600	£450

55. The Appellant was initially represented by Sarah Wood of 5 Saint Andrew's Hill Chambers. Ms Wood's year of call is 1996. On 29 April 2021 Ms Wood advised by email that as the Defence was calling five witnesses, the two days set for trial would not be adequate (there were six Prosecution witnesses); that the agreement of the Defence should be sought to that and the court informed; and that as a longer trial would conflict with a commitment she could not change, she would be unable to represent the Appellant at trial. The case was passed to Mr John Ojakovoh of 2 Harcourt Buildings, year of call 2008. The trial and refresher fees are Mr Ojakovoh's. The rest are Ms Wood's.

56. The Determining Officer quoted paragraph 23 of the judgment of Mr Justice Hickinbottom (as he then was) in *R v Evans & Ors* [2015] EWHC 1525 (QB):

> "With regard to counsel's fees, the assessment of criminal costs is still usually based upon a basic brief fee and refreshers (see Part II of the Taxing Officers' Notes for Guidance (2002)), with hours of preparation being only one factor to be taken into account rather than forming the basis of a mathematical calculation. On an assessment, a determining officer "must, in the exercise of his discretion, determine a sum which, with the refreshers and any subsidiary fees he considers proper, would provide reasonable remuneration" (paragraph 2.7 of the Taxing Officers' Notes for Guidance). In whatever form counsel's fees have been agreed, on any assessment it is the court's primary task to assess reasonable remuneration for the job."

57. The Determining Officer concluded that the fees allowed for the pre-trial hearings were reasonably sufficient to compensate the Appellant taking into account the circumstances of the case, the time reasonably taken in preparation and the length and type of hearing.

58. As for the trial fees, having considered counsel's work log and the case as a whole, taking into account the work and responsibility involved in preparing and conducting the trial, the Determining Officer concluded that the total fees allowed of £4,870 represented reasonable compensation to the private prosecutor for work done by the advocate (I make the total allowed for trial to be £4,875 excluding the £450 allowed for the sentencing hearing, total £5,325).

59. The Determining Officer, in her written reasons, reminded herself that counsel's fees are not to be assessed by way of an arithmetical calculation. I agree. One does not simply apply an hourly rate to time spent. When it comes to work outside court, one must look at time reasonably expended, and it is a long-established principle that the brief fee for a hearing is not to be calculated by reference merely to time spent at an hourly rate. One must have regard, for example, to the responsibility undertaken by counsel in appearing as advocate.

60. The papers before me include attendance notes prepared by Ms Wood regarding the time spent by her and the work undertaken by her prior to and at the first hearing on 9 November 2020, the PTPH on 9 December and the mention on 9 June 2021, when the Appellant unsuccessfully applied for the trial to be adjourned.

61. On 9 November 2020 Ms Wood spent 1.5 hours reviewing her papers and preparing for the hearing and, on 10 November, 55 minutes setting up remote hearing arrangements with the court and then attending the hearing, and 20 minutes preparing an attendance note afterwards. On 8 and 9 December 2020, she spent 1 hour preparing for the hearing, 90 minutes travelling to and from court and 2 hours 30 minutes at court. On 8 and 9 June 2021, Ms Wood spent 1 hour in preparation, one hour travelling and two hours 45 minutes at court.

62. The Determining Officer cites *R v Slessor* (no citation is given) as an authority for making no allowance for time spent by counsel travelling to and from court. Judging by the brief references to the case in the Crown Court Fee Guidance and the Criminal Bills Assessment Manual, *R v Slessor* does not furnish authority for that proposition. Perhaps if I had had some submissions from the Lord Chancellor on his appeal, more light might have been shed on the point. As it is, all I can say is that whilst it is correct that counsel does not normally make (and has not in this case made) a separate charge for travel time, I am unaware of any binding authority to the effect that time reasonably spent by counsel on travel to and from court must simply be ignored when the overall reasonableness of a brief fee is being considered.

63. All of Ms Wood's time records for the 2020 and 2021 hearings appear to me to be unremarkable, and the brief fees charged by her to be well within a reasonable range for the work undertaken. My conclusion is that Ms Wood's claimed brief fees for the hearings on 10 November and 9 December 2020 and 9 June 2021 should be allowed in full.

64. Ms Wood's fee note indicates that on 29 April 2021 (the date of her email warning her instructing solicitors that the time estimate for the trial was inadequate) she spent 3 hours reviewing the defence statement, advising on further enquiries, considering the jury bundle index and considering the timeframe for the trial. For 1 May 2021 her fee note records 2 hours 15 minutes reviewing the evidence and the indictment, preparing agreed facts and advice, and exchanging emails with her instructing solicitor on evidential issues. I understand from Mr Fairbrother that the work shown for 1 May 2021 was actually undertaken in January 2021.

65. According to comments appended to the Determining Officer's written reasons, these fees for 29 April and 1 May (or January, as appears to be the case) 2021 were disallowed in their entirety as falling within the brief fee. That appears to me manifestly to be wrong, for two reasons.

66. The first is that the work was undertaken more than six weeks (and some of it six months, although I appreciate that the Determining Officer may not have understood that) before the trial. A brief fee, conventionally, will cover trial preparation from the delivery of the brief and attendance on the first day, but it does not extend to work undertaken over six weeks before trial, when no brief has yet been delivered.

67. The second is that Ms Woods did not render a brief fee, so the cost of the work undertaken by her in April and May 2021 cannot fall within it. If the change of counsel had been a luxury indulged in by the Appellant it would be right to disallow any duplicated fees, but the change was imposed on the Appellant by the increased length of the trial, and there is no evident duplication of work anyway.

68. In short, there is no principle that dictates that because a brief fee was paid to someone else, Ms Wood must go entirely unpaid for 5 hours 15 minutes' recorded work on the preparation and management of the Appellant's case.

69. That said, I do have some reservations about the scale of the fees charged for the work undertaken on 29 April and 1 May (or rather January) 2021. The fee rendered for April 2021, by reference to the time recorded, equates to £250 per hour, and for May 2021 at a yet higher hourly rate. It has to be borne in mind that in *Evans* Hickinbottom J concluded that hourly rates of £240 per hour for junior counsel (albeit led juniors) were appropriate "top end" non-legal aid rates for criminal work, by which he was referring to very substantial, technical and complex fraud proceedings.

70. Whilst I do not overlook the importance of the case from the Appellant's point of view it was not remotely on the scale of *Evans*, and at the time it was being worked on by Ms Wood none of the complications attendant on the trial itself had yet risen. For those reasons, for the work undertaken by Ms Wood on 29 April and 1 May 2021 I would allow total fees of £950 (excluding VAT).

71. Turning to Mr Ojakovoh's brief fee, my starting point is that £3,000 would be, fairly obviously, a very reasonable brief fee for a 3-day criminal trial, even if it had not actually extended to 6 days. Mr Fairbrother advises me that the brief fee was in fact substantially discounted in recognition of the Appellant's status as a charity, and that does help explain what appeared to me initially to be a lower fee than one would normally expect.

72. Even if there could be any doubt about the reasonableness of the fee, it would be disposed of by a detailed work log produced by Mr Ojakovoh recording an entirely credible 29.5 hours' work on pre-trial preparation and (excluding four hours' travel time) the first day of trial. The brief fee should be allowed in full.

73. Mr Ojakovoh's work log then indicates that during the first four days of trial, his working day lasted between 12 and 14.5 hours, and on the last day of trial 9.75 hours, which given the way the trial developed (and the helpful detail in his work log of the work actually undertaken on each day) is again entirely credible. Only on the fifth day of trial did Mr Ojakovoh manage to limit his working day to a respectable 6.25 hours.

74. Even ignoring the four hours' travel undertaken by Mr Ojakovoh on every day of the trial, presumably between London and Winchester, he has manifestly earned his daily (and again, I understand, substantially discounted) refresher fee of £1,000 per day, which should be allowed in full.

75. As for the sentencing hearing, I have some reservations about the four hours' preparation time recorded by Mr Ojakovoh. I do not mean that I doubt he actually spent that time, only that there might be an element of doubt about whether all of it was (again, objectively speaking) reasonably incurred. Bearing in mind however the unusual circumstances of this case and the policy considerations attendant upon the sentencing process I can understand that Mr Ojakovoh would have been obliged to devote a substantial amount time in preparation. Looking at the matter in the round, I would regard a brief fee of £600 as within a reasonable range for the sentencing hearing in the circumstances of this case. It should, accordingly, be allowed in full.

Summary of Conclusions

76. The Determining Officer's conclusion that the witness expenses recoverable by the Appellant, for the attendance of Mr Browell and Mr Dudderidge as witnesses at the trial, fall to be assessed by the Crown Court rather than by the Determining Officer is not in my view based upon a viable interpretation of the 1986 Regulations. It is also contrary to the provisions of paragraphs 1.4.1 and 2.6.3 of the Practice Direction (Costs in Criminal Proceedings) 2015 (as amended).

77. Those witness expenses do, accordingly, fall to be assessed by the Determining Officer as a part of the costs awarded to the Appellant under the order made on 26 August 2021 by Mr Recorder Tait under section 17 of the Prosecution of Offences Act 1985. The witness expenses of both Mr Browell and Mr Dudderidge were reasonably incurred and should be assessed and paid in accordance with Part V of the 1986 Regulations and the rates and scales published by the Lord Chancellor.

78. Mr Dudderidge's attendance on the first day of trial was reasonable in the circumstances of this case, and the Appellant should be remunerated in full for his attendance.

79. Counsel's fees should be allowed in full as claimed, save for the fees shown in Ms Wood's fee note for 29 April and 1 May 2021, which should be allowed at a total of £950 plus VAT.

80. As a footnote I should add that the costs allowed for this appear are higher than would usually be the case. That is because the appropriate rates are for privately funded work.