Neutral Citation No. [2024] EWHC 308 (SCCO)

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 02/02/2024

Before:
COSTS JUDGE Brown

IN THE MATTER OF:

SCCO reference: SC-2023-CRI-000059
Criminal proceedings case reference: T20217251
R V SOHIDUL MOHAMED

Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013

COUSINS TYRER SOLICITORS (1)

Appellants (1)

-and-

THE LORD CHANCELLOR

Respondent

AND IN THE MATTER OF:

SCCO reference: SC-2023-CRI-000170
Criminal proceedings case reference: T202171712
R v SAMSUL MOHAMED

Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013

CRIMINAL DEFENCE SOLICITORS (2)

Appellants (2)

-and-

THE LORD CHANCELLOR

Respondent

AND IN THE MATTER OF: -

SCCO reference: SC-2023-CRI-000032,
Criminal proceedings case reference: T20217219 & T20217251
R v TINASHE KAMPIRA & SAYDUL MOHAMED

Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013

ACHILLEA & CO SOLICITORS (3)

Appellants (3)

-and-

THE LORD CHANCELLOR

Respondent

The appeals have been unsuccessful save for the appeal by Achillea & Co. in respect of disbursements only.

REASONS FOR DECISION

1. The Appellant solicitors are all litigators who represented the defendants Sohidul Mohamed, Samsul Mohamed, Tinashe Kampira and Saydul Mohamed in proceedings before the Crown Court in Sheffield (as set out in detailed above).

2. The issues arising in this appeal for my determination are whether, pursuant to the graduated fee scheme set out in the Criminal Legal Aid (Remuneration) Regulations 2013 (as amended) ("the Regulations"), the Determining Officers were correct,

(1) to award the Appellants one fee each on the basis that each of them had conducted one case, and not on the basis that each of them had conducted two cases;
(2) to determine that payments should be made to each of the Appellants on the basis that in the proceedings there was just one trial and not a trial and a further trial or retrial.

3. Achillea & Co Solicitors also pursued an appeal in respect of respect of disallowances the LAA had made in respect of their claim for certain disbursements. I was concerned that little attention had been paid to this issue and that it would benefit from further discussions between the parties. In the event, after the appeal hearing, the parties were able to agree that sums were due in respect of this element of the claim.

4. At least one of the decisions made by the Determining Officers was made following a claim for recoupment by the LAA, the original decision being to pay two set of fees to the first Appellants. It appears from that decision that the sums involved on these points are substantial: notice of recoupment in respect of the claim which is the subject of the first appeal was for some £53,000 (including VAT).

The costs appeal hearing

5. At the hearing on 10 January 2024, which took place by video link, I heard submissions from Mr. Shepherd, Solicitor for Cousins Tyrer Solicitors ('the first Appellants'), Mr. Ward Costs Draftsman, for Criminal Defence Solicitors ('the second Appellants') and Mr. Achillea solicitors for the Achillea & Co. Solicitors ('the third Appellants'). I also heard submissions Mr. Morris, counsel, who appeared on behalf of the respondent ('the LAA'). I had also received the written submissions or notes on behalf of all parties; Ms. Weisman, an employed solicitor, had served written submissions on behalf of the Legal Aid Authority ('the LAA') the effective Respondent) and Mr. Morris adopted them for the purposes of the appeal)

6. At one stage in the appeal hearing all the Appellants had conceded their appeal in respect of the second issue (that is to say conceded that there was only one trial for the purposes of assessing the fees) but in the course of the argument on the first issue Mr. Achillea on behalf of the third Appellants sought to revive his case on this point, and the other Appellants thereafter did likewise. In the absence of any real prejudice, I permitted all the Appellants to withdraw their concessions and to add this point to their Grounds of Appeals and/or take the point, even if it had not taken below, to the Determination Officer. Amongst other things that could be said, Mr. Morris quite fairly accepted he was prepared to deal with the point.

7. In reply submissions Mr. Ward raised a point about the Criminal Insanity Procedures Act 1964 ('the 1964'). It was a point made in reply to those of Mr. Morris in his submissions. It was raised very late in the hearing (which lasted all day). I did not however consider it too late for Mr. Ward to make further submissions, but in the event I asked for some clarification of his case, which both advocates helpfully provided by email after the hearing.

The facts in summary

8. In her written submissions Ms Weisman has provided me with an account of what occurred in the proceedings, recounting in part what appears on the court log (part of which have been produced to me). Her account was qualified only to a modest extent by Mr Achillea.

9. The Defendants were charged, along with a co-defendant Atif Mohammed, on a three count indictment, the counts being murder; possession of a firearm with intent to endanger life, and assisting an offender. Samsul Mohammed, Tanisha Kampira and Atif Mohammed were named on counts 1 and 2, only Saydul and Sohidul Mohammed appeared on count 3.

10. On 19 November 2021 the parties attended court for a case management hearing (FCMH) and entered not guilty pleas to the matters against them. The case was set down for trial in January 2022.

11. I understand that the court log records that a trial is recorded as began on 17 January 2022. There was in any event then substantial legal argument. A jury was sworn in, Ms, Weisman says, on or about 26 January (Mr. Achillea says day 8) and the prosecution began opening its case. However, on 27 January, and before any evidence had been called, an issue arose as to whether a co-defendant, Atif Mohammed, was fit to stand trial, and an order was

made for reports to be obtained in respect of his fitness for trial. The jury was discharged on 31 January.

12. On 4 February 2022, the reports were available and the Judge ruled that Atif Mohammed was unfit to stand trial. Ms. Weisman says that there were then discussions in court about how the matter would proceed noting that there would be a trial of facts for Mohammed Atif, as well as the substantive matters against the other co-defendants. There was also, I am told, mention as to whether Atif Mohammed's Not Guilty plea would be vacated, as well as exchanges about the best course to take in relation to the indictment. The matter was put over to 7 February.

13. According to the part of court log, which has been produced to me, on 7 February 2022, the parties again attended court, jury balloting began and later that day a jury was sworn. At about 15.23 the prosecution counsel appears to have raised a matter concerning the indictment. It is said in the log that the prosecution were neutral as to the order of the defendants on the indictment. The Judge then appears to have addressed the advocates and asked them, in effect, what should be done about the Not Guilty Plea of Atif Mohammed, reminding the parties - it would appear - that she did not think he was fit to stand trial. The advocate for the prosecution then said that their application was to amend the order in which the defendant appears on the indictment. The Judge then asked whether the Not Guilty plea could be vacated. The prosecuting advocate appears to have said that it could and that they were willing to find the authority to see whether it could be done (the Judge was told that that was usually the case in the case of a Guilty plea). It thus appears that there was some uncertainty as to whether the same would apply to a Not Guilty plea. The Defendant's advocate appears to have then suggested that the original indictment be stayed and the defendants, save Atif Mohammed, be re-arraigned. The log then records that the Judge did order the indictment be stayed and a new indictment preferred with all the defendants to be arraigned except Atif Mohammed.

14. Despite the Prosecution appearing initially neutral on the point, the order of the defendants on the new indictment puts Saydul Mohammed before Sohidul Mohamed in the list of defendants at the head of the indictment and in particular on Count 3. The new indictment also omits Atif Mohammed. Otherwise the new indictment was the same as the earlier one. The four defendants who remained to face trial were then arraigned and the matter then proceeded with a new jury empanelled. All four defendants were subsequently convicted.

Issue (1): one or two cases?

15. Schedule 2 of the Regulations sets the remuneration to be made to a litigator under the scheme. The Schedule applies to "every case on indictment" [para. 2]. Fees are paid per case; thus where there are two cases, the litigators (the solicitors) would be entitled to two separate fees . Schedule 2, also provides the following definition of 'case':-

> "*1.—(1) In this Schedule—*
> *"case" means proceedings in the Crown Court against any one assisted person—*
> *(a) on one or more counts of a single indictment;*

16. Mr Ward says that I should read the provisions as providing that, because one indictment was stayed and another one was preferred, therefore there were two indictments

and not one "single" one and, he says that in those circumstances there were two cases. His case was, as I understood it, that whenever one indictment is stayed or quashed and another is preferred, the litigator is entitled to two sets of fees because there are two cases whether or not there was any substantive difference in the case before quashing and after preference of the new indictment. He said that in any event there was in this case a need for the first indictment to be quashed (or stayed) and a second preferred, or at least there were good reasons why the Judge took or might have taken such a course: I should, as he and others submitted, be careful about assuming that, as he put it, this was a matter of mere housekeeping that the first indictment was stayed.

17. It was also argued by Mr. Shepherd and Mr. Achillea that there were a number of substantial changes brought about by staying the first indictment and then preferring the second, such that the case afterwards was a new one in substance. Reliance was placed in particular on the service of fresh evidence on 7 February; and it was said that the changes in order of the defendants on the indictment and the finding that Mr. Atif Mohammed was unfit to plead, all effectively meant there was in substance a new case.

18. There have been a significant number of decisions by costs judges, including myself, on the interpretation and application of the provisions which I have set out above. I sought to summarise the cases in *R v Abada* [2022] EWHC 2926 (SCCO) [18] to [28]; that summary was not as I understand it challenged and it is not necessary for me to do again. In short, save for two early cases (which Mr Morris said were decided at early stages of the introduction of the Digital Case System, 'DCS') in various factual circumstances that are set out in these decisions, the mere staying or quashing of an indictment and the preferring of a new one, has not been considered a sufficient basis to say the proceedings had been pursued on two indictments. In the two cases in which appellants were found to have entitlement to two fees for what might be understood as being in substance one case, such an outcome was considered to flow from what has been referred to as 'mechanistic' approach to the Regulations; the suggestion that this might have given rise to windfall was met with the view that this was simply one of the 'swings and roundabouts' of the scheme. My own view is however that where indictments are stayed or quashed because, for instance, two indictments needed joining and the joined indictment was preferred, this could not of itself mean that there were two cases (see *R v Arbas- Khan* [2019] SCCO Ref: 219/18 and *R v Nash* [2020] SC-2020-CRI- 000177 (a decision of Costs Judge Leonard)). In recent decisions there has been a degree of unanimity amongst the costs judges that this process (of quashing/staying and preferring a new indictment) does not give rise to two cases, unless in substance there were different cases: the joinder of two indictments is, for instance, the coming together of two indictments to form one and therefore as a matter of law be just one case. Also when a count in an indictment is amended, for instance, as to the period over which an offence is said have been committed, the staying of one indictment and the preferring of new revised indictment, does not in general create a new case.

19. It is not suggested that in this case that, had the Prosecution failed at trial on the indictment preferred on 7 February, it could resurrect the stayed indictment. The effect of the stay of the indictment in this case it seems to me is that the allegations made in earlier indictment could not be pursued separately from those in the subsequent indictment. The same is the case, as I understand it, when an indictment is joined; the prosecution cannot resurrect one of the earlier indictments after a joinder; similarly, where there is an amendment.

20. It seems to me clear that, when read as a whole, that the provisions cannot be read so as to allow a court to hold in circumstances where every time an indictment is stayed and a new one preferred, a new fee is paid. The process of the staying and preferring indictments can be used to effect relatively slight amendment and it is administratively easy to do it this way using the DCS. It may indeed on occasions be that this process is justified on 'belt and braces' without any real consideration of the necessity to do so. The later indictment is, however, in effect replacing the first, in circumstances where there could be no further proceedings on the earlier indictment. In such circumstances, absent a substantial change of case, then, in my view, the rules should be read as requiring payment for one case because as a matter of substance and law, there have only been proceedings at any one time on one indictment.

21. The situation is, however, different where there are two freestanding indictments and where one indictment is stayed and another indictment which is different in substance is proceeded, as explained by Costs Judge Rowley in *R v Horsfall* [2023] EWHC 3128 (SCCO). It seems to me that it is to the situation that arose in that case that the provisions at para. 1(a) above are directed.

22. I consider that such a reading of the relevant provisions better reflects the scheme as a whole (and the manner in which fees are calculated, by reference inter alia to pages of prosecution evidence served in the case, see para. 34 below) and, in particular, when considered against the rules of criminal procedure against which they must be interpreted. In *R v Martin* [2022] EWHC 2842 (SCCO) at [44] Costs Judge Leonard put it perhaps slightly differently but to the same effect, when he said this:

> *"I might put the point another way by considering what is meant at paragraph 1, Schedule 2 to the 2013 Regulations by "a single indictment". In a working environment in which even minor changes to an indictment may be (or may have to be) implemented by the preferment of a second form of indictment and the quashing or stay of the first, rather than the physical alteration of an existing one, it would be inconsistent with the purpose of the 2013 Regulations and unworkable in practice to reach the conclusion that two graduated fees are, in consequence, payable. There must be a real distinction between the relevant indictments, sufficient to justify the conclusion that there has been more than one "case". Otherwise there is, for the purposes of the 2013 Regulations, a single indictment."*

23. Nothing that Mr Ward said in support of his argument persuaded me that the regulations should be read in the way he contended for. Indeed, as appears to be uncontroversial, if the provisions were read in the way he contends, it could lead to the payment, potentially, of multiple fees not just for litigators but also advocates for what in substance was the same case (note the similarity of wording in Schedule 1 of the Regulations governing the fees of advocates); indeed, a legal representative may be compensated <u>at least</u> twice for their preparation for trial if the process is repeated. The staying or quashing of and preferring of a new indictment is often, it seems to me, a convenient method of achieving an amendment of an indictment and might be presumed to happen not infrequently.

24. Mr. Ward acknowledged, I think, the absurdity which would result on his reading. But he said the scheme gave rise to some unfair outcomes for litigators; there was unfairness

to a litigator when a substantial amount of work had been done for the preparation of a trial and then the defendant pleads guilty shortly before the trial begins - in those circumstances only a 'cracked fee' is payable which is not calibrated to allow for the stage at which the guilty plea is given. As I understood Mr. Ward's argument, this demonstrated why I should take what he termed a 'mechanistic' view of the Regulations. The court should not, as he developed his argument, in any event interpret the regulations in the way contended for by the LAA just because, as I understood him to put it (or at least acknowledge), the 'floodgates' would open.

25. I am not persuaded by these points. The alleged unfairness is merely a reflection of the way a block-rated scheme, such as this one, operates. His point does not mean the scheme is unfair as there may well be circumstances where a defendant pleads guilty shortly after being arraigned and yet there is full entitlement to a 'cracked fee'(see the definition of 'cracked trial' in the Regulations); so the litigator might in these circumstances, on Mr. Ward's analysis, be regarded as overcompensated. Overall, however the compensation is expected to even out.

26. I will come to my reasons for rejecting the submissions of Mr. Achillea and Mr Shepherd shortly, but it seems to me to be clear that at any one time the proceedings against each of the Defendants were pursued on <u>one single indictment</u> and there was only ever one case against each of these Defendants.

27. Even if there were any doubt or ambiguity about the literal meaning of the prevision, I would prefer a construction which avoids an absurdity. It is clear that in construing the Regulations there is a presumption against a construction that creates an anomalous or, irrational or illogical result (see *Bennion, Bailey and Norbury*, 2017 edition para. 13.5). To my mind there can be no doubt that the intention of Parliament was to compensate litigators for one case in the circumstances that I have set out, and where there is in substance only one case. I am not satisfied there is anything to displace that presumption and the reference to "proceedings" "on a single indictment" in the relevant provisions must, in my judgment, be construed accordingly.

28. I did not understand Mr. Ward to argue that such a presumption does not apply and might be engaged here. But in any event even if I were wrong about this (and whilst not necessary for me to mention it) where a court, as here, is abundantly sure of (1) the intention of Parliament; (2) that the drafter had inadvertently failed to give effect to that intention; and (3) the substance of what it is intended, the Court is entitled, if not required, to give effect to that intention, see *Inco Europe Limited v First Choice Distribution* [2000] 1 WLR 586 (cited in see *Bennion, Bailey and Norbury*, 2017 edition at 15.1). Even though I did not invite argument on it (given Mr. Ward's stance) it is difficult to see why this approach does not also support the conclusion that I have reached as to the correct interpretation of these provisions.

29. This conclusion makes it unnecessary for me to consider Mr. Ward's further argument that the changes brought about the staying of the indictment were matters of substance, not mere housekeeping. The argument was that given that Atif Mohammed had previously been arraigned and a trial had started on 17 January, Section 4A(2) of the 1964 Act required that determination of the issue of whether he "*did the act or made the omission charged against him*" be undertaken by the original jury (see Section 4A(5) of the 1964 Act). This was no longer possible on 7 February 2022 as that jury had been dismissed. Therefore, he says, re-

arraignment was a necessary or at least a sensible option as any other course might have vitiated the new trial. In order to re-arraign, it was necessary to quash the indictment (this is because a jury may try only one indictment at a time and the indictment could not therefore be quashed in relation to Atif Mohammed alone).

30. I am hesitant about expressing any decided view of the finer points of criminal procedure, and since it makes no difference to the outcome, there is no need for me to look into this in more detail or to have invited further argument. However, I have some difficulties seeing why what the Judge sought to do could not have been achieved in the way she suggested (vacating the Not Guilty plea) and, if appropriate, by amendment of indictment (to remove Atif Mohammed) where it was considered that a determination of the issue under Section 4A(2) of the 1964 Act was required. As Mr. Morris pointed out, relying on *R v B* [2008] EWCA Crim 1997; [2009] 1 WLR 1545, proceedings can continue on the same indictment in respect of defendants who are unfit to plead and those who are fit to plead (in respect of those unfit to plead, the jury determines whether he committed the actus reus; in respect of those fit to plead, the jury determines their guilt). Thus there is generally no necessity to quash or stay an indictment where one defendant is held unfit to plead so it is difficult to see why it should be necessary on the facts of this case (or indeed why this should lead to the creation of a new case). On this approach, the staying of the first indictment and the preferring of a new one might merely have been a more convenient way to proceed on the existing case.

31. In any event this somewhat intricate argument serves to illustrate, at least to my mind, why the interpretation that I have set out above must apply to these Regulations. It might be assumed that it does from time to time happen that a defendant on a multi-party indictment becomes unfit in the run up to trial. The steps taken in response are by way of case management, not with a view to creating a new case. Moreover, they need not impact on the substantive case against each of the remaining defendants.

32. Turning then to the arguments advanced by Mr. Shepherd and Mr. Achillea and my reasons for rejecting them.

33. In short, I am not satisfied that the additional evidence would not have been served anyway, even Atif Mohammed had not been found unfit to stand to trial and there had been no preferring of a new indictment. It might be regrettable or indeed unusual that a substantial amount of evidence is served late, but it is surely not unheard of. At the hearing I gave Mr. Shepherd an opportunity to explain and evidence how the additional evidence arose from the preferment of the new indictment and identify how this process might have brought about the need to serve extra evidence, but I received no real explanation as to how this might be so. Further, there is no obvious reason why the change in the order of the Defendants should have given rise to the need for further evidence to be served or indeed why the determination in respect of Atif Mohammed's fitness should have had this effect. I fully understand that there appears to have been a substantial amount of new evidence and I understand that the allegations against the defendants were put rather differently on the basis of this evidence, but I am not satisfied that the additional evidence brought substantial changes to the case against the Defendants as it had been set out in the indictments. The criminality alleged was the same.

34. Once again, it seems to me (and I note this in passing) the argument serves to illustrate the difficulties with the approach of the Appellants as to the interpretation of the

relevant provisions. Assuming they were right and there were a new case, it would presumably require a Determining Officer to analyse the new evidence served on or after the preferment on 7 February to see whether it related to the case before the first indictment was stayed or the case afterwards for the purposes of deciding the number of page of prosecution evidence[1] associated with that case. That sort of analysis (intricate as it is) does not, to my mind, seem at least readily to fit with the way the scheme operates.

35. Further, I cannot accept that the finding of unfitness in respect of Atif Mohammed or indeed the change in the order of the defendants changed the case against the remaining defendants to such an extent that it could be said that there was new case. I accept in broad terms that the change of the order in which a defendant gives evidence can have an effect of the evidence they give. However I understood Mr. Achillea to suggest that the finding of unfitness of Atif Mohammed might have prompted one or other defendant to consider whether any attempt to blame Atif Mohammed for the murder would be considered opportunistic by a jury. I cannot see that any such a consideration, and even if these events might have caused the defendant to change their account as to what happened, that could give rise to a new case.

36. The matters relied upon by the Appellants (and I have considered all of them) seem to me just the twists and turns of criminal proceedings. Indeed if a defendant is found unfit to stand trial in the course of hearing after the jury is empanelled, the case can proceed as appears from *R v B*; indeed as I understand it, the parties can agree the order which evidence is given without the need to amend an indictment. I am not satisfied that any of these matters substantially went beyond the sorts of events that could occur in what was indisputably one case (and no staying of an indictment had occurred). But in any event the changes were not to my mind, substantial enough to give rise to two cases.

37. Accordingly, in my judgment there was only one case against each of the Defendant.

Trial and retrial

38. Paragraph 13 of Schedule 2 sets out the provisions for payment of retrials for litigators. It provides:

> (1) *Where following a trial an order is made for a retrial and the same litigator acts for the assisted person at both trials the fee payable to that litigator is—*
>
> *(a) in respect of the first trial, a fee calculated in accordance with the provisions of this Schedule; and*
>
> a. *in respect of the retrial, 25% of the fee, as appropriate to the circumstances of the retrial, in accordance with the provisions of this Schedule.*
> ...

[1] As to which see *The Lord Chancellor v Lam and Meerbux Solicitors* [2023] EWHC 1186

39. There is no definition of "trial", "retrial" or "new trial" in the Regulations. The provisions setting out the payments due in these circumstances in earlier regulations have, I am told, referred to the terms "retrial" and "new trial" interchangeably. But it was not suggested, I think, that this makes any material difference in determining the issues here.

40. An order for a retrial is however generally considered determinative of there being a retrial. In *R v Nettleton* [2013] 1 Costs LR, the now Senior Costs Judge, considered that where there are two "legs" of proceedings it is appropriate to consider whether the hearings took place within same procedural or temporal matrix when deciding whether there were two trials. That may involve the weighing a variety of relevant factors, such as whether the first leg of proceedings has run its course, the length of time between two legs of proceedings, the relative length of each leg of proceedings, and material and substantive differences between the way in which the prosecution puts its case. The service of new evidence is not necessarily determinative of whether there is a new trial nor is the discharge of one jury and the empanelling of another.

41. In this case it is not said that there was an order for a retrial nor was there change in trial judge. As I have already set out the first jury was discharged on 31 January. Reports had to be obtained and considered and the Judge made a ruling on fitness on 4 February with a new jury empanelled to deal with both substantive proceedings and, it is said, the subsidiary trial of facts was on 7 February. The discharging of a jury could, in some circumstances, be as a result of the need for a retrial but in this case there appears to be a simple practical reasons why this course might have been taken; so that the jury was not kept waiting whilst the issue concerning Mohammed Atif's fitness was considered. In any event (and whether or not this was so) the length of time between the first and second "leg" of proceedings was modest. The first leg of proceedings had not proceeded beyond the opening (I understand it to be said by Ms. Weisman that the available records suggest that it is not even clear whether the opening submissions had finished). There was in any event no change of advocates and although it is clear that the first leg of proceedings did run for some days, taken in the context of the case overall, there is not in my judgment sufficient to justify the conclusion that there was any or any sufficient breach in the procedural and temporal matrix indicating that a retrial had taken place.

42. The position had changed as regarded Atif's Mohammed's fitness and the order of defendants, and further evidence had been served but in context these were not enough to render the subsequent hearing a new trial. Whilst the documents I have been provided with indicate that there was been some significant change in the way the case was put: Mr Achillea says that there was fresh evidence as to the location of Sohidul Mohamed and his brother Saydul Mohamed and Mr. Shepherd appears to make a similar point in his Note (that Sohidul was put "more closely to the point of alleged disposal of the murder weapons"), I am not satisfied that in this case that there such substantive differences in the way the Prosecution put their case in the second hearing that it could be regarded as a new trial. Inevitably in the course of a single trial there are liable to be some developments in the way the case is put.

43. Some reliance was placed in the notes in the court log distinguishing days 1-11 in respect of the first hearing and days 1-22 as indicating that separate hearings. But I cannot accept that the manner in which these hearings were noted in the log carries any significant weight in the determination as to whether there was a new trial or retrial.

44. Nor to my mind do the passages relied upon the decision of Costs Judge Whalan in *R v George* [2023[EWHC 2187 (SCCO) assist (this case related to the provisions concerning Advocates in Schedule 1- albeit nothing appears to turn on the different wording used in these provisions). Each case is to be determined on its facts. It seems to me important to recognise that the costs judge in that case puts considerable emphasis on the fact that the trial judge had in effect made an order for a new trial (having recorded that first trial was 'ineffective') which in his judgment on the facts of that case constituted a break in the procedural and temporal matrix such that the second hearing a new trial. In contrast, in this case the concerns over Atif Mohammed's fitness appear to have caused a hiatus in an otherwise continuous process from 17 January to conviction.

45. Accordingly, in my judgement in each of these cases there was only a single continuous trial.

Costs

46. Only the third Appellants have succeeded in this appeal, and only on the issue that has been compromised as to disbursements. I am minded to direct a contribution to their costs in the sum of £200 to mark the success on this point but that on other points raised they, as with the other Appellants, have been unsuccessful. I will give the Respondents and the third Appellants 14 days from receipt of the judgment to object to this (and if they do, to state what direction I should make in respect of this party's costs). In respect of the other Appellants there will be no direction for the payment of costs.

COSTS JUDGE BROWN