Neutral Citation No. [2024] EWHC 509 (SCCO)

Case No: T20207103
SCCO Ref: SC-2023-CRI-000060

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 28/02/2024

Before :

COSTS JUDGE NAGALINGAM

Between:

R

-v-

Daljit Singh Pamma

and

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

Imran Khan and Partners	**Appellants**
- and –	
The Lord Chancellor	**Respondent**

Hearing date: 18/1/2024

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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COSTS JUDGE NAGALINGAM

Costs Judge Nagalingam:

Background

1. The Defendant was one of 26 persons who were variously involved across a 19 count indictment. The Defendant was thought to be a member of an organised crime group (OCG) involved in conspiracies to import and supply Class A drugs in the form of cocaine and Class B drugs in the form of ketamine, amphetamine, hexedrone and cannabis.

2. Hundreds of kilograms of cocaine and various Class B drugs were imported into the UK from The Netherlands and then distributed throughout the UK generating millions of pounds in criminal benefit.

3. The drugs were imported by a legitimate courier company via the Channel Tunnel to a holding depot at Manchester Airport before being collected by members of various OCGs from around the country.

4. The Defendant is one of six described as having a significant role in the conspiracy, with counts 3 and 4 (set out below) described as wholesale large-scale supplies. Specifically, the Defendant had travelled to Manchester Airport on 20 April 2017, 27 April 2017, 17 May 2017 and 7 June 2017 in hired vans to collect crates of imported drugs and deliver them to a property in the West Midlands. There, the Defendant would help in breaking open the crates.

5. The following counts relate to the represented Defendant:

   Count 1 being conspiracy to fraudulently evade the prohibition on the importation of goods, contrary to section 1(1) of the Criminal Law Act 1977. Namely, that the Defendant, along with others, between the 1st day of January 2017 and the 15th day of December 2017, conspired fraudulently to evade the prohibition on the importation of a controlled drug of Class A, being cocaine, imposed by section 3(1)(a) of the Misuse of Drugs Act 1971 and in contravention of section 170(2) of the Customs and Excise Management Act 1979.

   Count 2 being conspiracy to fraudulently evade the prohibition on the importation of goods, contrary to section 1(1) of the Criminal Law Act 1977. Namely, that the Defendant, along with others, between the 1st day of January 2017 and the 15th day of December 2017, conspired fraudulently to evade the prohibition on the importation of controlled drugs of Class B, imposed by section 3(1)(a) of the Misuse of Drugs Act 1971 and in contravention of section 170(2) of the Customs and Excise Management Act 1979.

   Count 3 being conspiracy to supply a controlled drug of Class A, contrary to section 1(1) of the Criminal Law Act 1977. Namely, that the Defendant, along with others, between the 1st day of January 2017 and the 15th day of December 2017, conspired to supply controlled drugs of Class A, being cocaine, contrary to section 4(1) of the Misuse of Drugs Act 1971.

Count 4 being conspiracy to supply a controlled drug of Class B, contrary to section 1(1) of the Criminal Law Act 1977. Namely, that the Defendant, along with others, between the 1st day of January 2017 and the 15th day of December 2017, conspired to supply controlled drugs of Class B, contrary to section 4(1) of the Misuse of Drugs Act 1971.

6. The Defendant was found guilty on all four counts above, and sentenced to serve concurrent prison terms ranging from 6 to 12 years. He was deemed to have a significant role. Thereafter, attention turned to confiscation proceedings which resulted in a confiscation order for £68,120.54 (which was representative of the realisable assets out of a total benefit of £8,421,265.82.

7. This appeal relates to a dispute as to time spent and enhanced rates claimed for work done in relation to confiscation proceedings under the Proceeds of Crime Act 2002 (POCA)

8. 93.5 hours has been claimed, and 30 hours allowed. An enhancement of 100% is sought, and 25% has been allowed.

The Relevant Legislation

9. The applicable regulations are Part 6 of Schedule 2 to The Criminal Legal Aid (Remuneration) Regulations 2013 (‘the 2013 Regulations’), and in particular regulation 29:

10. 29(1) Upon a determination the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate specified in paragraph 27 for preparation, attendance at court where more than one representative is instructed, routine letters written and routine telephone calls, in respect of offences in Class A, B, C, D, G, I, J or K in the Table of Offences.

    (2) The appropriate officer may allow fees at more than the prescribed rate where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that—
    (a) the work was done with exceptional competence, skill or expertise;
    (b) the work was done with exceptional despatch; or
    (c) the case involved exceptional complexity or other exceptional circumstance.

    (3) Paragraph 3 of Schedule 1 applies to litigators in respect of proceedings in the Crown Court as it applies to advocates.

    (4) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, the appropriate officer must apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

    (5) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate officer must have regard to—
    (a) the degree of responsibility accepted by the fee earner
    (b) the care, speed and economy with which the case was prepared; and

(c) the novelty, weight and complexity of the case.

(6) The percentage above the relevant prescribed rate by which fees for work may be enhanced must not exceed 100%.

(7) The appropriate officer may have regard to the generality of proceedings to which these Regulations apply in determining what is exceptional within the meaning of this paragraph.

11. As to reasonableness, regulation 26(3) applies which provides:

    26 (3) The appropriate officer must consider the claim, any further particulars, information or documents submitted by the litigator under regulation 5 and any other relevant information and must allow such work as appears to him to have been reasonably done in the proceedings.

The Parties' Submissions

12. Mr O'Donnell appears on behalf of the Appellant and relies on the case of *R v Chukwuka* [2023] EWHC 3156 (SCCO) which he states dealt with very similar issues to the current appeal and provides an analysis of the concept of "joint benefit", and the role of the defence in seeking to demonstrate that a Defendant has gained no or minimal benefit.

13. In looking at the proceeds of crime, the trial judge has a responsibility to consider the evidence and make findings of fact as to roles, joint benefit etc.

14. Mr O'Donnell submits that the Respondent understands and acknowledges the importance of establishing what role the Defendant played and what benefit, if any, he gained. In this regard, he refers to the penultimate paragraph on the 8th page of the written reasons dated 16 June 2023 which states "At the time of the POCA proceedings the defendant had been convicted and sentenced. As set out above, in passing sentence HHJ Hurst did not accept that the defendant was merely a courier, (see Annex D – extract from attendance note – sentencing note)."

15. Mr O'Donnell then referenced the 3rd page of written reasons dated 27 April 2023 where around half way down the page it states:

    "The majority of the prosecution pages in this case comprised of the call data (served on disc in the original trial), which would have been specifically relevant to establishing the conspiracy and the defendant's role within it. Whilst I accept that the defendant maintained throughout that his role was that of a courier, it is clear from the comments made on passing sentence that this was not accepted by the trial Judge and would not be accepted by the prosecution in the confiscation proceedings".

16. Mr O'Donnell submits this further demonstrates the Respondent's acceptance that the evidence considered was relevant, and that there was a dispute as to roles and benefits.

17. Mr O'Donnell then referred me to *R v Ahmad* [2014] UKSC 36, which he submits highlights the relevance of role and benefit, and the requirement to closely scrutinise the

evidence, with particular reference to paragraph 47 which provides:

"47. When a defendant has been convicted of an offence which involved several conspirators, and resulted in the obtaining of property, the court has to decide on the basis of evidence, often relying on common sense inferences, whether the defendant in question obtained property in the sense of assuming rights of an owner over it, either because he received it or because he was to have some sort of share in it or its proceeds, and, in that connection, "the role of a particular conspirator may be relevant as a matter of fact, but that is a purely evidential matter"."

18. Mr O'Donnell observes that within the Respondent's written reasons "It has been accepted that the majority of the prosecution evidence from the substantive case comprised of call data used to establish both the defendant's guilt in relation to the offences as well as his role within the wider conspiracy", and submits that establishing role and benefit is central to any confiscation case.

19. Mr O'Donnell raised particular concern with the 2nd paragraph on the 9th page of the written reasons dated 16 June 2023, where it states "The call data served in the substantive case (exhibit SMMI) consisted of 19,948 pages of which 3,418 were of core relevance to this defendant and a further 7,573 of limited relevance in preparation for the trial. It does not, in my view automatically follow that this was directly relevant in the POCA proceedings."

20. In this regard, the Appellant is concerned that the Respondent is applying hindsight where, in the 1st paragraph, they refer to trial counsel's remuneration claim without acknowledging that the litigator does not have the benefit of hindsight. The litigator is expected to consider all the evidence and condense that to what is placed before counsel.

21. Mr O'Donnell then took me through the mathematics of a pages versus time calculation to demonstrate the minutes per page calculation in this matter is very reasonable. In particular, he relies on an extract from the 'Criminal Bills Assessment Manual' (issued April 2013 and reviewed in September 2023), and "Section 3.3 Preparation of Documents", where sub-paragraph 2 of the same states:

"The length and content of any statements taken from a defendant and/or witnesses should be considered, particularly if lengthy attendances are claimed. As a guide, it will normally take approximately one to two units (6 to 12 minutes) preparation to consider and dictate each page of a simple document. More complex documents may take longer per page and justification for this should be on file (5.7, 8.30 – 8.34 of the SCC Specification). Any lengthy attendances should be capable of substantiation by reference to statements taken or a full file note or a letter to the client confirming the advice given. The time spent attending the client will not necessarily correlate with the length of any statement prepared. However, for longer attendances the Assessor would expect to see a more detailed justification on file e.g. witness statement, attendance note etc. There may be circumstances affecting the client which may justify a longer than usual attendance e.g. language problems, mental disability, or the case itself may be complex. The solicitor should justify why additional time was spent as part of the claim"

22. Mr O'Donnell invited consideration of a 6-12 mins per page guidance as compared with the seconds/minutes per page calculations within the index appeal.

23. Mr O'Donnell thereafter submits that confiscation proceedings are quasi civil in nature. He refers to the "Costs Assessment Guidance: for use with the 2018 Standard Civil Contracts", section 2.12 which provides:

    "As a very rough guide it takes approximately 2 minutes per A4 page to read the most simple prepared document in order to consider its contents and significance. Time taken will depend on the quality and layout of the document e.g. whether handwritten or typed, single or double spaced, large or small font etc. Documents of greater complexity may, of course, take a longer time either to read or compare with other documents".

24. Mr O'Donnell considers this demonstrates the consistency across criminal and civil guidance, in terms of the factors to be taken into account when considering how long to allow for consideration time.

25. He observes that because the Respondent has accepted the evidence was relevant in its determinations and written reasons, this is not a case of the Legal Aid Agency having concluded that the work done was not necessary, but rather than the time taken is too much.

26. Mr O'Donnell further observed that when the time taken is broken down, being 22,629 pages (as per the claim form) in the 93.5 hours claimed, it works out at around 15 seconds per page, i.e. significantly less than any of the guides referenced above.

27. The Respondent elected to not attend this hearing and instead place reliance in their written reasons, the most recent of which is dated 16 June 2023. In relation to the time spent, the Respondent's reasons for allowing 30 hours as against 93.5 hours may be summarised as follows.

28. The Determining Officer considered an attendance note said to cover work from 1 to 29 November 2022 during which time the Appellant considered the defence case statement (8 pages), witness statements (2,646 pages), exhibits (19,522 pages), PNC (6 pages) and transcripts (447 pages).

29. The Respondent accepts that the attendance note sets out the pages considered and the time taken, but submits there is insufficient information as to what pages were considered on any particular date, or any detail on the relevance of that information to the POCA proceedings.

30. It is on this basis the Respondent has looked to the information provided by trial counsel in support of his claim for special preparation, and confirmation that the sentencing note confirms that the Defendant was a close associate of defendant Takhar and was also associated with the defendants Bahia and Sanga.

31. The Respondent has also taken into account that the prosecution did not assert that each defendant should be jointly responsible for the total benefit of the drugs imported/distributed but based their assertions on the value of the drugs that were directly linked to each defendant - in this case the value of 160 kilograms of cocaine

imported into Manchester Airport between 22 March and 15 June 2017 and 200 kilograms of ketamine distributed between the Midlands and Slough between 22 March and 18 May 2017.

32. The Respondent's case is that the real question on determination was whether a detailed consideration of all pages was reasonable in this case, and if it was not then what time (in the absence of specific information within the attendance note) would be reasonable?

33. In responding to the Appellant's request for redetermination dated 2 May 2023, the Respondent's reflections on the decision in *R v Asif* were that the Costs Judge accepted that "in some circumstances, the case papers are only of very limited relevance in respect of the subsequent confiscation proceedings."

34. In further reference to *R v Asif*, the Respondent observes that the prosecution was in relation to financial offences, money laundering and conspiracy to defraud, and reflecting that the Costs Judge went on to say "original papers would be highly relevant in terms of considering the question of money laundering and financial benefit. A greater proportion of the papers would likely be relevant to such financial issues and since the allowance of time is carried out on a broad basis whether as a global sum or as a minutes per page, then this factor militates towards a higher allowance than would be the case for reading prosecution material concerning some other criminal activity."

35. In terms of approach, the Determining Officer submits they have not refused to allow time for the consideration of the papers, but rather concluded that the majority of the evidence considered had little or no relevance in the POCA proceedings, and reduced the time allowed accordingly.

36. The Respondent also takes issue with the applicability of a 2 minutes per A4 page approach (reading time) to criminal costs appeals, and in any event submits that they did not adopt such an approach because they could not be certain as to how many of the pages considered were relevant to the POCA proceedings.

37. In so far as the Respondent has relied on comparison with the case of *R v Chaudhary*, a decision of Costs Judge Whalan, Mr O'Donnell argues the test for enhancement is not to compare the index case with other "similar cases of large-scale drug importation and supply over a prolonged period", but to compare against all other cases generally.

38. In that regard, he argues that the index case falls into the "top bracket" when looked at against the whole spectrum of criminal cases attracting remuneration under the regulations.

39. Mr O'Donnell also relies on the crown court's existing findings of exceptionality in this case, observing that was applied under a more stringent test that that required by the remuneration regulations.

40. Mr O'Donnell then referred me to the "Instructed Advocate's Statement" of Neil Ross, dated 7 May 2019, being an application for an extension of the representation agreement to include a silk and a junior, where at paragraph 34 of the same it sets out that "This case is one of the most serious drugs cases prosecuted in the Midlands in the

last decade. It is complex and will require detailed analysis of significant quantities of evidence. Pamma is said to be close to the head of the conspiracies."

41. Mr O'Donnell observed that a case summary of over 100 pages is rare, and that in the index matter the case summary exceeded 400 pages which he submits is exceptional.

42. Mr O'Donnell also argued exceptionality with regard to the fact that the permitted period to bring confiscation proceedings was extended by more than a year because exceptional circumstances existed, and that it was rare to get any extension at all.

43. Mr O'Donnell therefore pleads the index matter is in the "top bracket" and that the Respondent has failed to adequately explain why they have limited an enhancement to 25%.

44. Mr O'Donnell invited recognition of the fact that the main fee earner in this matter was Mr O'Hara, whom I am advised is ranked highly in Chambers & Partners as is the appellant firm. Mr O'Donnell invites recognition of the level of expertise deployed.

45. He contrasts this with the Crown who had the benefit of a QC and leader before the Defendant did, plus the considerable resources of the CPS, a full investigation team and 3 years of conduct, as compared with the Appellant with Mr O'Hara working on his own for most of the limited 5 month period the Appellant had conduct.

46. Accounting for despatch, complexity, expertise and degree of responsibility accepted, the Appellant maintains a 100% enhancement is justified.

47. The Determining Officer has accepted that this case was undertaken with exceptional despatch when compared to the generality of proceedings to which the regulations apply, and taking into account the factors set out in Regulation 29(5). It is on this basis they allowed 25%.

48. The Respondent also relies on *R v Hussein-Ali* (SCCO ref: SC-2019-CRI-000150) where Master Rowley observed:

    "It seems to me that this is regularly a difficult ground to make out since the speed with which the proceedings are completed often appears to be simply a circumstance of how speedily the Crown is able to deal with its role in the procedure. Indeed, there are a number of applications for enhancement that I have received where the fact that the proceedings have taken a considerable amount of time has been said to be exceptional. In my view, this ground is always going to be difficult to meet unless, for example, the solicitors are instructed late in the proceedings and are having to catch up with court directions that have been set in proceedings which are also being brought against co-defendants".

49. The Respondent has recognised that confiscation orders had been agreed for a number of the co-defendants and were ongoing for others, that a contested hearing in relation to this defendant had been listed for 26 January 2023, and that this defendant was the last to have the issue of confiscation resolved.

50. It is because of this accepted heightened burden and responsibility on the instructed

solicitors that the Respondent has allowed for a 25% enhancement.

51. Notwithstanding the international nature and scale of the offences and their investigation, the granting of representation to cover both leading and junior counsel, the extension of the "permitted period", the number of pages within the POCA bundle, and third party interests in the defendant's property, the Respondent does not consider that exceptional circumstances were at play in this matter such that an enhancement in excess of 25% is justified.

52. The Respondent observes that "This case was a difficult and complex conspiracy involving multiple defendants. Whilst the benefit alleged was large it was in line with that for the co-defendants and also in similar cases of large-scale drug importation and supply over a prolonged period." and relies on the comments of Costs Judge Whalan in *R v Chaudhury*, where he held:

    "11. This was, in my view, a difficult, complex and comparatively high-value conspiracy, where the paucity of the prosecution's forensic evidence meant proceedings were rendered more complex than simplified. I do not accept, however, that this case could be classed as "exceptional", either in terms of the competence, skill or expertise, or despatch with which the work was done by the Appellants, or the complexity of the case per se, or any other exceptional circumstances, or in respect of any combination of the above. The benefit claimed and agreed of £1.64m/£1.39m is large but not in any way atypical for confiscation proceedings. There was, as the Respondent has noted, no question of complex, corporate identity or hidden assets. Notwithstanding the fact that was a "highly sophisticated and complex conspiracy", therefore, I cannot classify it as exceptional, thereby permitting an enhancement on the prescribed rate."

53. The Respondent submits that in the index matter there were no issues of complex corporate identity, hidden or overseas assets, and no requirement for a forensic accountant to be instructed because the defendant's finances were straightforward comprising a number of bank accounts with a small or nil balance, a number of ordinary shares and an interest in one UK property.

54. The benefit asserted by the prosecution was based on the value of the drugs associated with the defendant's role in the commission of the offences, plus his interest in the property and the value of the shares.

55. The Respondent acknowledged there were conflicting positions adopted with respect to the defendant's interest in the property, asserted at 50% by the prosecution and 25% by the defence.

Analysis and decision

56. The issue of time spent in my view is not the key area of dispute in this appeal.

57. I am satisfied that the Respondent has adequately explained their reasoning for the reduced number of hours allowed. However, I disagree that either the time allowed or the time originally claimed would permit for anything more than a brief consideration of the evidence (as opposed to the "detailed" consideration the Respondent suggested had taken place).

58. Even on the Respondent's case, nearly 11,000 pages were of core or limited relevance. Neither category of evidence could reasonably be ignored and the time claimed amounts to around 30 seconds per page.

59. Having said that, I accept that the Appellant is in some difficulty in sustaining an argument for the time spent as claimed. The evidence may have been substantial but in terms of the POCA proceedings and the reasonable expectation that an experienced defence specialist will have the required skill, experience and knowledge to hone in on sections of evidence of particular relevance, the time is reduced to 80 hours.

60. In terms of an enhancement, I remind myself that this is not a case where no enhancement has been allowed. The Respondent has allowed 25% and explained their reasoning behind this.

61. I accept the Respondent's argument that the defendant's financial position in terms of accounts held did not present a complicating factor such that it would contribute to the award of an enhancement. In reality, it is the issue of the valuation of the drugs in the conspiracy and establishing the defendant's interest in a single property.

62. Whilst I accept that Costs Judge Leonard's decision in *R v Chukwuka* addressed similar issues to those set out in the index appeal, I do not accept that the similarities extend to the point that a 100% enhancement is justified in this matter.

63. *R v Chukwuka* concerned a particularly intricate, technical and complicated fraud and money laundering operation which led to the Respondent allowing 100% (as claimed) on elements of the time claimed. That is not to say the index matter was straightforward. Further, I also accept the Appellant's argument is that the test is not a comparison with other complex, high value confiscation proceedings.

64. In the index matter, the Respondent has allowed a 25% enhancement on all of the time allowed, and it is my direction that whatever enhancement is allowed on appeal it will be applied to all of the hours allowed.

65. In my view, establishing the value of a property is an exercise which will only very rarely engage any of the exceptionality clauses set out in the regulations. This is not one of those cases. Further, establishing ownership, interest or division of interests in a property is again work will rarely engage a defence to the extent that the work done would trigger any of the exceptionality clauses. It does not here.

66. However, one is not necessarily concerned with an overly analytical approach of the individual factors but rather the cumulative effect of a number of factors. Indeed it is that cumulative effect which has already led to an allowance of a 25% enhancement.

67. In my view, the majority of the factors argued are relevant to the issue of time spent and indeed has led to an increase in the hours allowed. The cumulative effect has already led to an allowance of 25% and certainly does not justify the allowance of 100%.

68. With reference to paragraph 29(5) of the regulations, and acknowledging that the exceptionality test has already been met as a consequence of the Determining Officer's

existing decision, I accept that a significant degree of responsibility was accepted by the fee earner, and that they acted with a high degree of care, speed and economy. It is for those reasons that I concluded an enhancement of 35% ought to apply.

Costs

69. I allow £500 plus the appeal fee for the Appellant's costs.

COSTS JUDGE NAGALINGAM