



SENIOR COURTS  
COSTS OFFICE

24 APR 2017

Dated: 21 March 2017

SCCO Ref 06/17

**ON APPEAL FROM REDETERMINATION**

**REGINA v ARON ANDALL**

ISLEWORTH CROWN COURT

CASE NO: T20160198

LEGAL AID AGENCY

DATE OF REASONS: 14 NOVEMBER 2016

DATE OF NOTICE OF APPEAL: 22 DECEMBER 2016 (RECEIVED)

APPLICANT: VEJA & CO SOLICITORS  
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The appeal has been successful for the reasons set out below. The appropriate additional payment, to which should be added the sum of £100 paid on appeal, should accordingly be made to the Applicant.

**JR JAMES  
COSTS JUDGE**

## REASONS FOR DECISION

1. Veja & Co Solicitors ("V&Co") Appeal against the Determination of Ms Helen Garton of the Legal Aid Agency ("LAA" - Written Reasons dated 14 November 2016). The area in issue was pages of Prosecution evidence ("PPE"). This matter proceeded on paper submissions only, with no Hearing taking place.
2. The relevant legislation is the Criminal Legal Aid (Remuneration) Regulations 2013, as amended, paragraph 1(2) of Schedule 2, Part 1 of which gives the definition of PPE and the relevant guidance is the Crown Court Fee Guidance published August 2014, Appendix D of which gives the definition of PPE and what cannot be considered to be PPE.
3. Mr Andall (representation granted 12 February 2016) was charged with three counts of assault (common assault contrary to section 39 Criminal Justice Act 1988, assault occasioning ABH contrary to section 47 of the Offences Against the Person Act 1861 and sexual assault contrary to section 3 of the Sexual Offences Act 2003). They involved an alleged beating on 6 January 2016 and an alleged beating and sexual touching on 28 January 2016, all against the same complainant female. He was found not guilty on 1 September 2016.
4. V&Co's claim for a graduated fee, submitted 7 September 2016, included a claim based on 167 PPE, as to 60 [pages of] Statements and 107 Exhibits. This was reduced by the LAA to 2 Statements and 75 Exhibits.
5. Matters went to and fro between the LAA and V&Co; the initial determination on 12 September 2016 reduced the PPE to 77 in line with the LAA Report "...as cover sheets are not payable". An LF2 redetermination request then came from V&Co (dated 28 September 2016) asking for the PPE to be reinstated and stating that the Assessor had simply missed large portions of the pages as submitted by the Crown (Section G Key Witness Statements 54 pages, Section H Key Exhibits 32 pages).
6. On 13 October 2016 the LAA caseworker stated that "...you wish to claim Key Evidence. Unfortunately Key Evidence does not count as PPE, when normal evidence has been served". Notably, this is NOT what was said in the initial determination, but the confusion may have arisen because what was allowed was section J 75 Exhibits and section I 6 Witness Statements, of which 4 pages were apparently cover sheets hence J times 75 plus I times 2 equals 77 PPE allowed.
7. V&Co then wrote to the LAA on 17 October 2016 stating that, per the Guidance, "Evidence includes:
  - Committal Bundle or NAE front sheets endorsed with the CPS/prosecuting authority page count
  - Index of evidence
  - Paginated pages
  - Any other objective evidence generated by the Prosecution"

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and that the Key Evidence from Section G (and presumably H, although their letter does not say so) clearly comes within these parameters.

8. The LAA responded on 25 October 2016 stating, "Only the Statements and Exhibits are payable, the Key Evidence is not payable on this case." V&Co reiterated its claim on 27 October 2016 listing the following items which it said were within the PPE:

- "Key Witness Statements [G] includes Statements of Officers and the complainant, translators and others
- Witness Statements [I] includes further Statements of the complainant that are not duplicates
- Key Exhibits [H] include the ROTI (Written record of taped Interview(s)) of the Defendant
- Exhibits [J] include photographs and screenshots of Whatsapp messages that are clearly not duplicates"

9. It is notable that V&Co asserted that items in Witness Statements and Exhibits were not duplicates, but as these items were allowed that submission really did not help their cause. They do not assert that items in the Key Witness Statements or Key Exhibits were not duplicates; as these were disallowed it would have been more useful if V&Co had been able to assert that these were not duplicates either.

10. Written Reasons dated 14 November 2016 stated that Key Evidence in sections G and H of the LAA Report were initial details for the Prosecution Case ("IDPC") and service for the PTPH (Plea and Trial Preparation Hearing), "...please see the DCS Standard File Structure on gov.uk website..." The LAA stated that this was advanced information which is not formally served, and is, "...what we would ask you to provided [sic] the actual pages of before DCS was implemented and we would pay, but only in early guilty plea cases and discontinuances where no formal evidence was served."

11. The LAA went on to state "The served evidence is shown in sections I and J (DCS standard file structure). Evidence has been served in this case, hence the evidence in sections I and J of 2 and 75. We have paid this as this is the formal served evidence by the CPS."

12. V&Co accordingly wrote back to the LAA and resubmitted an LF2 Litigator Fee Review Form on 17 November 2016 requesting 167 pages of PPE to which the LAA responded on 30 November 2016 stating, "In order to appeal this matter further you must submit an Appeal to the Senior Costs Judge as detailed in our letter dated 14 November 2016." Hence the matter has come to me for a decision.

13. It is unhelpful that the LAA's position appears to have changed over time, as set out in detail above and in precis form as follows:

<b>Date</b>	<b>Details</b>
12.09.16	Cover sheets are not payable
13.10.16	Key Evidence does not count as PPE when normal evidence has been served

25.10.16 Only Statements and Exhibits are payable, Key Evidence is not payable on this case

14.11.16 G and H served as IDPC/advanced info not formally served and only paid in early Guilty plea/discontinued cases where no formal evidence was served. Formal evidence WAS served here, therefore that (sections I and J) HAS been allowed, G and H have NOT.

14. V&Co's position has been more constant, they rely upon the definition of Evidence in the Guidance on the LAA's own [www.gov.uk](http://www.gov.uk) site, quoted in para 6 above, and say that sections G and H clearly fall within that definition.

15. What does not seem to have happened on either side, is any attempt to compare sections G with I (Key Witness Statements with Witness Statements) or H with J (Key Exhibits with Exhibits).

16. The LAA allowed at section I two one-page Witness Statements of the complainant, both apparently dated 20 July 2016 (or it may be two pages of the same Witness Statement from her). The rest of this section was cover sheets and hence disallowed. Section G, Key Witness Statements, includes what looks like 14 pages from the complainant, which even allowing for any cover sheets, must be much more than was in the Witness Statements at section I (especially as it has different dates, 16 February 2016, 1 April 2016 and 19 July 2016 which is very close to 20 July 2016 as in section I but could not be assumed to be the same thing without careful perusal). It includes a further 40 pages covering a further 11 Witnesses (including an English translation of one of the Statements) which are not in section I at all.

17. The LAA allowed at section J 75 pages of material, as to 5 pdf photograph files and 70 screen shots of Whatsapp messages, dated July and August 2016. Section H Key Exhibits was the written transcript of Mr Andall's tape recorded interview, at 32 pages in length again possibly including cover sheets and clearly not within the exhibits listed in section J at all.

18. V&Co rely upon case law as to what does and does not count as PPE:

**R v Sturdy [1999] 1 Costs LR 1**  
**R v Ward [2012] 3 Costs LR 605**  
**R v Debenham SCCO Ref 10/12**

V&Co state that R v Sturdy and R v Ward are authority for the proposition that documents served by the prosecution that form part of the committal bundle, should be counted as PPE. In the case of R v Ward the learned Senior Costs Judge quoted from the Criminal Defence Service (Funding) Order of 2007, para 1(2) of Part 1 to Schedule 2 of which refers to PPE including all Witness Statements, documentary and pictorial exhibits, records of interviews with the assisted person which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.

19. However, in that case (which was on the 2007 Order not the 2013 version) the learned Senior Costs Judge ruled against a graduated fee claim based upon 86,617 PPE and instead found just 1,253 PPE should be the basis of the calculation. R v Debenham is on an entirely different point i.e. nothing in the Funding Order limits PPE to pages served before the Defendant pleads guilty or is convicted; based on the table at paragraph 11 above there is no point being taken about the timing of the service of these documents relative to the verdict.

20. The **2013 Crown Court Fee Guidance** (online at [www.gov.uk](http://www.gov.uk)) cites R v Ward but also the **Criminal Legal Aid (Remuneration) 2013 Regulations (in both Schedules 1 and 2)**. It is of course the Regulations which prevail and these state that, for the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5), going on to add:

*“(3) The number of pages of prosecution evidence includes all—*

*(a) witness statements;*

*(b) documentary and pictorial exhibits;*

*(c) records of interviews with the assisted person; and*

*(d) records of interviews with other defendants,*

*which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.”*

21. Pausing here it would seem that the Key Witness Statements at section G fall within 3(a) above and the ROTI at section H falls within 3(c) above. On the question of whether the documents in sections G and H were “served” I wrote giving both parties the opportunity to comment upon the recent case of **Lord Chancellor v Edward Hayes LLP and Nick Wrack [2017] EWHC 138 (QB)** in which Mrs Justice Nicola Davies with Master Whalan sitting as an Assessor, addressed the question of service of evidence (in that case, on disc) and specifically the provisions of Schedule 1 paragraphs 1(2) and 1(3) of the 2013 Regulations as to whether the evidence had been “served on the court” or was part of the “served prosecution documents”.

22. Although not directly on point (the issue here is not with regards to electronic evidence) I thought it pertinent to this case because the Court in that case was minded to take a pragmatic, rather than a mechanistic, approach to whether evidence has or has not been “served” and what duty the litigator has to consider it once having received it. Neither side came back with any comment; I make no criticism of them for that but simply record it as a fact.

23. Taking a pragmatic approach to this case, I can see eminent sense in not paying Solicitors for “Key Witness Statements” and “Key Exhibits” in a case where the CPS go on to serve full evidence in which those “Key” documents feature (as duplicates) alongside everything else, that would be paying them twice for the same document.

22. However, I cannot see any sense in not allowing “Key Witness Statements” at G and “Key Exhibits” at H in a case where the CPS goes on to serve evidence at I and J that does not include any of those documents. It makes no sense at all that V&Co should not be paid for considering the transcript of their own client’s taped interview,

or the Witness Statements of a further 11 Witnesses, not to mention what may be as much as 14 pages (but is likely less, with cover sheets removed) of Witness Statements of the complainant herself.

23. None of that sounds peripheral, all of it is clearly evidence within the parameters set out in the Regulations and cited at paragraph 20 above, and the suggestion that V&Co would only be paid for reading this material if Mr Andall had pleaded Guilty or the case had been discontinued at an early stage (as per the LAA's Written Reasons of 14 November 2016) makes no sense at all.

24. I remain troubled that, as set out in paragraph 9 above, the letter from V&Co dated 27 October 2016 only makes a positive assertion that items are not duplicates, in respect of Witness Statements I and Exhibits J which the LAA has already allowed and paid. That assertion is not advanced in respect of Key Witness Statements G and Key Exhibits H which have been disallowed.

25. That said, on my own reading as set out in paragraphs 15 to 17 above they do not appear to be duplicates and nowhere in its various responses as summarised at paragraph 13 above, does the LAA state in terms that V&Co are not being paid for sections G and H because those sections are already covered under other headings for which V&Co have been paid.

26. Instead, the LAA asserts that G and H have not been paid for because V&Co were then served with I and J, but as set out in paragraphs 15 to 17 above there is little or no overlap between those sections (the possible exception being the complainant's Witness Statement of 19 July 2016 which V&Co could not assume was identical to her Witness Statement of 20 July 2016 in any event). Having received the items at G and H I find that V&Co were entitled if not duty bound to consider them and, following the approach of the learned Judge in Lord Chancellor v Edward Hayes LLP and Nick Wrack I take the view that these pages were "served" and should be counted as PPE.

27. Accordingly this appeal succeeds and I direct the LAA to pay V&Co Solicitors the balance of the PPE claimed, excluding any duplicated items and any cover sheets (as to which I cannot comment, not having seen the bundle) plus their £100 Appeal fee.

To:

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