

LEGAL AID AGENCY

High Cost Crime Appeal Decision – Single Adjudicator

R v B – reasonableness of time allowed for consideration of exhibits and unused material. Appeal allowed

Case: [REDACTED]
Appellant (firm/counsel): [REDACTED] SOLICITORS
LAA Respondent: [REDACTED]
Date of decision: 16.12.23

Case Manager's original decision:

Adjudicator's Decision:

**R vs [REDACTED] Single Adjudicator
16.12.23**

This is an appeal by the Provider, [REDACTED] Solicitors acting on behalf of the assisted person, [REDACTED] against the LAA's decision dated 26th October 2022 in relation to:

- 1. To allow 30 seconds rather than 1 minute per page in respect of 51,109 pages of material and an additional 1,048 pages of transcripts (Task 10).**
- 2. The ancillary time allowed to consider the unused material such as the making of notes of relevance, Schedules etc (Task 22)**

This appeal concerns both Task 10 and Task 22.

In considering this appeal I have had sight of the following documents:

- 1. VHCC Appeal form V5 dated 6th November 2023.**
- 2. Further submissions on behalf of the appellant dated 27th November 2023.**
- 3. VHCC appeals response form which is undated but was emailed**

to the appellant and the Appeals Manager on 21st November 2023.

4. R v [REDACTED] appeal papers 1 which consist of chronology of events and R v [REDACTED] CM [REDACTED] appeal response R v [REDACTED].
5. [REDACTED] emails to [REDACTED] LLP.
6. R v [REDACTED] appeal papers 2 which comprise of a folder that contains papers requested by the CM.

Relevant facts

The Provider is representing the defendant in these proceedings who is one of four defendants. The Provider states:

“The case involves what is more commonly known as an alleged ‘Pump and Dump’ scheme where the defendants are alleged to have purchased a company which had minimal assets and then released a series of announcements prior to and during the company being publicly listed. It is alleged that the announcements and publications sought to artificially inflate the share price in order to attract investment through sale of shares. The FCA allege that the company in truth had minimal assets and the shares were worthless. The defendants are alleged to have stripped the company of its wealth resulting in a loss to those who had invested in it. The charges brought are in respect of alleged wrong doing regarding the control and operations of the company, [REDACTED] between 2012 and 2016. In this particular case they state that charges have been brought in respect of alleged wrong doing regarding the control of [REDACTED]. They state that [REDACTED] was a premium listed company and its assets were limited. Despite the lack of the company’s commercial activity, it remained listed. Following a change of ownership in favour of the defendants, a number of announcements were made in the public in late 2014 which are alleged to be misleading. The FCA allege that a number of claims have been made which were false and misleading and issued solely for the purposes of artificially inflating the share price of the company. They state that this produced significant profits for the defendants in the present case of the defendant £488,500.

The FCA have served 52,157 pages of evidence consisting of 2,869 pages of exhibits and 49,288 pages of exhibits which comprise of PDF/Word documents. The Provider states in addition there are a number of spreadsheets and audio files which have been served and are not included in that count.

Also, the Provider states they have been provided with a large amount of unused material and they have counted approx. 47,000 items.

Task 10

The Provider states that they have requested 1 minute per page and the Contract Manager has allowed only 30 seconds per page.

They assert that:

“We believe that due to the nature of the exhibits (which are particularly dense, 30 seconds per page is inadequate for consideration of the same. Many of the pages of material will take more than 1 minute per page to consider but we have requested 1 minute per page on a swings and roundabouts basis”. “We have provided a sample of those documents (attached) to a Contract Manager who has responded as follows in their reason for refusing the requested uplift and to summarise the Contract Manager’s response is that she is not persuaded to allow 1 minute per page and finds it reasonable to allow 30 seconds per page at Grade B. She makes this decision based on having considered the representative sample and note that they had typed and therefore, not difficult to read”.

The Law

The relevant rules governing appeals against the LAA’s decision in relation to disputes regarding the number of hours within submitted Task Lists is set out in the 2022 VHCC Specification.

Paragraph 6.1 states:

“Where you disagree with a decision relating to those matters set out in paragraph 6.4 below, made by us, you have the right to appeal that decision. Your appeal will be considered either by one member of the VHCC Appeals Panel on the papers or by a committee with the opportunity for you to attend and make oral representations”.

Consideration of Evidence

4.32 Where the prosecution serve tranches of evidence at the outset of the case, it will be expected that the Case Manager will apply the following rates for reading and consideration according to the nature of the evidence:

Witness statements 2 minutes per page

Exhibits 30 seconds per page

Interview transcripts, full comment 2 minutes per page

Interview transcripts, no comment 1 minute per page

4.33 Where large volumes of material are served throughout the life of the case, the Case Manager may wish to allocate lesser allowances, if one or more of the following factors apply:

- There is a relatively small proportion of evidence relevant, or likely to be relevant, to a particular defendant's case**
- Evidence served later in the case does not significantly add to or change issues raised by evidence served earlier**
- There is repetition of evidence**
- The nature and complexity or otherwise of the material, or significant portions of the material, is such that the Case Manager may reasonably expect that a fee earner can read and absorb its contents at a faster rate**
- Where the prosecution may rely on an exhibit for continuity purposes, rather than analysing its contents (for example, where the whole of a computer hard drive is listed as an exhibit, but the prosecution have isolated and served separately that portion of it which they see as relevant)**
- The Case Manager may reasonably expect that a defence team is in a position to deal with matters more swiftly and efficiently given their increased familiarity with a case**
- The Case Manager may reasonably expect that a particular defendant's instructions, or the nature of their defence, may significantly assist the team in focussing on relevant tranches of evidence**
- The time requested to read evidence exceeds the time available from the moment of request to the expected conclusion of proceedings, taking into account the resources available for the task.**

4.34 Where appropriate, the Case Manager may allow a block of hours for an initial sift of the material, after which the onus will be on the defence team to persuade the Case Manager that particular portions of evidence are so significant that they require further and more detailed attention.

Unused material

4.35 Unused material may be served voluntarily by the prosecution or in response to specific requests for disclosure by the defence.

4.36 In requesting time to read this material, defence teams must satisfy their Case Manager of the particular relevance of this material to their defendant, and its potential to undermine the prosecution's case or

assist the defence case.

4.37 Where a tranche of unused material is served at the outset of the case a Case Manager may allow reading time at a fixed page rate according to the number of pages served. A starting point for the page rate allowance would usually be thirty seconds. A Case Manager would not expect to allow a higher rate unless there were particular circumstances to justify it and might wish to allow a lower rate where one or more of the factors listed above at paragraph 4.33 apply.

4.38 With the increasing likelihood of unused material being served electronically, and often in large volumes, the Case Manager may allow a block of hours for an initial sift of the material, after which the onus will be on the defence team to satisfy the Case Manager that particular portions of material warrant further or more detailed consideration.

The issue – Task 10

The issue I have to consider is whether the LAA's decision dated 26th October 2023 to allow 30 seconds per page in respect of the exhibits is reasonable.

The evidence before me as set out above comprises of two sets of representations, and example exhibits which I have considered including emails to and from the Contract Manager.

I have considered with all due care and attention the evidence provided to me. The sole issue for me is to decide whether 30 seconds per page is reasonable.

Following service of the Crown's case, the Provider applied for 1 minute per page in respect of the exhibits. There was correspondence between both parties as to why 1 minute per page was necessary for this Task. On 6th October 2023 after having considered various exhibits which consisted of email trails, letters which contained disclaimers and pro-formas, the Contract Manager found it reasonable to allow 30 seconds per page at Grade B.

On 10th October, the Provider made further representations in an email to the decision, stating that they did not consider her reasoning to be reasonable justification for refusing an uplift. Reference is made to the fact that the words were typed and the fact that when a document is typed, ordinarily it makes it more dense and therefore takes more time to read. They invited her to review the indictment and reconsider her decision.

On 17th October she responded by stating that 30 seconds per page was justified and there was not much distinction between their client and defendant 1 and 2. She also made reference to the fact that the exhibit representative sample sent are in PDF and therefore a search can be used to highlight key details. The Contract Manager requested the exhibits in full and this was not provided. She requested a random sample which she picked. This was provided and having reviewed this her view was that it was not justified to increase the 30 second per page to 1 minute per page.

Paragraph 4.32 and paragraph 4.33 as set out above sets the test to be applied in cases which includes at paragraph 4.32 as set out above where the Prosecution serves tranches of evidence at the outset of a case, it will be expected that the Case Manager will apply the following rates for reading and considering according to the nature of the evidence namely exhibits at 30 second per page.

Paragraph 4.33 sets out when larger volumes are material are served throughout the life a case, the Case Manager may wish to allocate lesser allowances if one or more of the following facts apply and the criteria needs to be met is set out above

Having considered the representations, I do not see that there is anything which is exceptional in this case that would justify a claim in excess of 30 seconds per page. The amount allowed for considering the exhibits is consistent with the test set out in paragraph 4.32 and 4.33 of the guidance.

In my view, the LAA are justified in authorising 30 seconds per page in respect of the exhibits. Therefore, having considered all the evidence and submissions with due care, I am satisfied that the LAA's decision dated 26th October 2023 to allow 30 seconds per page for considering the exhibits is perfectly reasonable and is the correct as a matter of law. There is nothing unreasonable within the LAA's decision to allocate 30 seconds per page.

The LAA have provided sound reasoning for its decision. It therefore follows from this that the Provider's appeal in relation to Task 10 is dismissed.

Task 22

This relates to unused material. The Provider states that some 47,000 items as opposed to pages have been served to date in the unused material disclosure. They have requested time for consideration of this material and have requested a block of 100 hours for ancillary tasks that may need to be undertaken relating to this material. They have

requested a block of 100 hours as opposed to the seconds/minutes per page approach on the basis that they acknowledge that not every page of unused material will need to be scheduled. The Contract Manager has refused the 100 hours and states inter alia:

“I wish to clarify, I am not saying further time will not be authorised but merely 372.89 hours currently authorised should be exhausted prior to reverting back confirming what documents remain outstanding to be scheduled. As long as you can persuade me as per paragraph 4.42 of the contract guidance, then further time may be authorised on a block hour basis. I wish to clarify that the approach I have taken here is the same approach multiple Case Managers have taken over hundreds of VHCC cases. The approach derives from the principle that a reasonable block of time needs to be identified for the scheduling of all material served and disclosed in a case and the way the CCU have always done, this is by using the amount of served material as an indicator to identify what hours are necessary to schedule the entirety of the served and unused material. Without such established approach any figure may be arbitrary. This is my final decision”.

The Provider states that the 372.89 hours authorised referred to ancillary time that has been authorised for served Prosecution evidence as opposed to the unused. They state that the time allowed was in no way based on the volume of unused material. It related solely to the served Prosecution material and what amount of time was considered reasonable to create and serve documents relating to that material.

I have considered an email dated 28th September 2023 with a Task List, and I note that in the Case Manager’s agreement and response column for Task number 22, ancillary time re unused, that she stipulates:

“We have agreed ancillary time based on served material. Our approach is that the hours allowed for served material should include unused”.

Having considered the above, it is unclear to me of the 372.89 hours allowed for the completion of all ancillary work whether that be served or unused material actually does indeed comprise hours for the unused material.

I would requested further information from the Case Manager on the 16th December 2023 by email, *“I need to know specifically with a breakdown of the 372.89 hours granted in this case; how many hours were granted for the served material and what element is attributed to the unused material? Can she give me a detailed breakdown and provide the final task list with a break down of the hours. Once I have this information I can finalise the appeal.”*

I have considered the response received on the 19/12/2023 in which she responds as follows by email:

“The ancillary time is broken down between the following tasks:

- *Task 9 – Statements – 31.12 hours*
- *Task 11 – Exhibits excluding interviews and statements – 322.60 hours*
- *Task 13 – FC interviews and prepared statements – 12.85 hours*
- *Task 15 – NC interviews – 6.32 hours*
- *Task 17 – Excel exhibits - 161 hours*

Total - 533.89 hours has been allowed for ancillary work for served material and should there be any hours left over, this is expected to be used on unused material, asked solicitors to revert back once the total of the ancillary hours are exhausted so can consider allowing further time.

Apologies, my error as I initially thought the total was 372.89 and missed out the 161 hours for the excel exhibits. “

It is clear to me that no time has been granted for consideration of the unused material and therefore time should be granted in accordance with para 4.35-4.38 above, be that at 30 secs per page or 100 hours which ever is the least.