

LEGAL AID AGENCY
High Cost Crime Appeal Decision – Adjudicator Committee

Case: R v [REDACTED]
Appellant (firm/counsel): [REDACTED]
LAA Respondent: [REDACTED]
Date of decision: [REDACTED] March 2024

Case Manager's original decision:

- 50% uplift to material served prior to the second Defendant, [REDACTED], obtaining a Representation Order.

R
v.
[REDACTED]
Adjudicator Committee
[REDACTED] March 2024

Adjudicator's Decision & Reasons

1. We have carefully considered the appeal representations made by both the provider and the LAA. We have also considered the 2022 VHCC contract guide.
2. The provider is representing at least two defendants with the benefit of a representation order (Mr B [REDACTED] and Mr L [REDACTED]) who are both involved in separate trials relating to an overarching allegation of VAT fraud (and consequential money laundering).
3. There are representation orders in place in favour of both defendants, although Mr B [REDACTED] was initially paying privately until 2 June 2023 when a representation order was then granted. The provider was always instructed by Mr L [REDACTED] under a representation order with a VHCC contract signed from 8 March 2022.

4. It was agreed by the LAA and the provider that there would be a 50% uplift to the reading rate for evidence served from 2 June 2023 for Mr B [REDACTED]'s case.
5. At issue is the decision of the LAA to not accept the provider's contention that there should be a 100% uplift for material relating to Mr B [REDACTED] served prior to then. Instead, the LAA considered that a 50% uplift to that material is reasonable.
6. The LAA have explained that it is an established principle to allow full reading rates for one defendant and an uplift of time for subsequent defendants with this approach supported by section 4.55 of the 2022 VHCC contract guide document.

Multiple fee earners

4.55. Where a single organisation represents more than one defendant in the same case, the Case Manager will expect to see some economy of scale in the work done, and will not anticipate that the organisation will replicate work done and costs claimed for each defendant represented ... Where possible, it will be expected that notes made by a single fee earner can be of use to more than one defendant or instructed Advocate...

7. The provider does not dispute that principle but relies on the fact that the cases of the two defendants are separate and there are separate trials and no factual connection between them, nor have there been any overlap in personnel at the provider dealing with the two cases.
8. We also take into consideration the following in the 2022 VHCC contact guide:

4.31 The Case Manager will make an assessment of reasonableness according to the benefit of a particular task to the defence case; the time and cost of that task as well as the overall costs of the case, and the reasonableness of the burden upon the taxpayer.

9. The firm's position can be summarised as follows; the case has been split into four trials with Mr B [REDACTED] appearing in trial three and Mr L [REDACTED] appearing in trial two. The defendants are not known to each other and are said to be involved in different aspects of the conspiracy. Mr L [REDACTED] is alleged to have been concerned in output VAT fraud via the purchase and sale of metals and Mr B [REDACTED] involved in the supply of fake VoIP as well as VoIP on VoIP VAT fraud. The firm submits the prosecution's case against each defendant is different and the 50% uplift does not provide sufficient time to consider evidence in respect of Mr B [REDACTED]. It would have also been improper and impossible with the time allowed under Mr L [REDACTED]'s contract to consider material on behalf of Mr B [REDACTED].

10. Despite there being separate trials with separate indictments, this is for administrative convenience and to make the trials manageable. We have concluded that we consider this to be one case with an overarching conspiracy and therefore allowing 100% uplift would not achieve any economies of scale as required by the guidance.
11. It is reasonable to expect the firm to have a high level of existing knowledge considering the work already done in respect of Mr L [REDACTED]. So far, work done will at the very least allow the firm to eliminate sections of non-relevant material to Mr B [REDACTED].
12. Whilst the roles allegedly played by the clients are different, there will be overlap between the two clients and allowing the full 100% uplift would not reflect the overall knowledge that the provider has of the case that could be brought to bear in terms of triaging, and then conducting, the reading of material relating to Mr B [REDACTED].
13. Nor would it reflect the work undertaken on a private basis for Mr B [REDACTED] prior to the grant of legal aid.
14. In those circumstances we conclude that an uplift of 100% would not be reasonable or proportionate. It is accepted that an uplift is appropriate. It is then necessary to consider what the extent of the uplift should be.
15. The LAA's decision to allow a 50% uplift on material served prior to the representation order being granted for Mr B [REDACTED] is considered both reasonable and proportionate and therefore is maintained. We cannot see any reason in principle why a higher uplift should apply for the material already served relative to that served going forward.
16. We have considered the previous cost decisions referred to by the provider. Each case must be decided on its own facts, and we are satisfied that the facts in this case are distinguishable from those in previous decisions (so far as can be established).
17. For the avoidance of doubt, we reject the submissions made by the provider and, for the above reasons, their appeal is refused.

14th March 2024

[REDACTED] – ICA - Lead Adjudicator
[REDACTED] - ICA
[REDACTED] – ICA