

# LEGAL AID AGENCY

## High Cost Crime Appeal Decision – Single Adjudicator

Case: R v [REDACTED]

Appellant (firm/counsel): [REDACTED] Solicitors

LAA Respondent: [REDACTED] (Contract Manager)

Date of decision: [REDACTED] 05.2024

### Case Manager's original decision:

320 Hours

### Adjudicator's Decision:

1. This is an appeal by the provider, representing Mr [REDACTED] against the LAA decision to allow 320 hours to review material provided on a USB stick instead of the 3237 hours requested by the provider.
2. The provider calculates that the USB contains 129,485 pages of evidence.

#### Relevant facts

3. Mr [REDACTED] is charged with 8 counts of importation of Class A Drugs, namely diamorphine. It is said he worked in a fruit and vegetable wholesalers, operated by co-defendant [REDACTED] and [REDACTED], [REDACTED], and later [REDACTED], were allegedly the UK receivers of large importations of Class A drugs, organised by leading co-defendant, [REDACTED].
4. Mr [REDACTED]'s case is that he was simply a warehouse operative, loading and unloading legitimate customer's orders of fruit and vegetables. He acted on orders from his boss, [REDACTED], and had no reason to think that the produce he was handling was anything other than that described or visible to him.

#### The Items in dispute

5. A request was submitted for 3,297 hours to read 129,485 pages of evidence and listen/view 40 hours of audio/video material at grade A fee earner rates. (The request was reduced by the provider to 2,158.08 hours following refusal of the initial request.)

This was split:

- a) Audio/Video review – actual time plus 50% of the time again for scheduling – i.e. 40hrs material equates to 60hrs to review and schedule.
- b) Documents: 129,485 pages at 1 minute per page plus 30 seconds per page to schedule – 3237hrs.

**The Provider's representations dated 9<sup>th</sup> April 2024**

6. The Provider has made written submissions in support of their appeal to the ICA. I have considered them in full but in summary, they assert:
- a) There is a very large quantity of evidence relied on by the Prosecution, which was initially served via the CCDCS, on Egress and then USB.
  - b) The USB contained copies of evidence previously served via the CCDCS and Egress, along with further new evidence.
  - c) An analysis was conducted of the USB which identified the additional material served and the subject of this task request dated 05.12.2023
  - d) The main contention arises over one particular Excel spreadsheet, which is served within the folder on the USB, titled "Secondary Review of Phone Downloads (Evidential)", and in the sub folder titled "SAM-03-08-10-2019-MC" which contains various sub folders still, along with an excel spreadsheet of the phone download and a pdf report of the phone download.
  - e) The Excel report is titled "SAM-3-08-10- 2019\_Device Filtered data\_2021-05-27\_Report.xlsx". The provider had calculated that there is a total of 74,916 pages in that folder, of which 68,714 are the excel spreadsheet.
  - f) The provider states the remainder of pages, in addition to the ones in the above Excel sheet, are accompanied by a CPS schedule with Disc 1 being 4135 and disc 3 20,356.
  - g) The provider relies on a previous decision by the LAA to pay 30 seconds for considering exhibits and 30 seconds for scheduling. On this basis, they say at least 408.13 hours should be allowed for the 24,490 pages mentioned above and this does not take into account the Excel spreadsheet, which they say is the focus of contention.
  - h) It is identified by the provider that the LAA reasoning for a block of

hours primarily relates to Excel spreadsheets which can be manipulated to reduce reading time, searches used but they say that this is not a simple task, as outlined by the LAA, because filtering does not narrow down results, word searches miss key points due to various reasons. They say the only way is to read the material page by page.

- i) The provider disagrees with the LAA assertion that the excel spreadsheet "SAM-3-08-10- 2019\_Device Filtered data\_2021-05-27\_Report.xlsx" is an exaggerated version of the PDF which runs to just 6544 pages. The provider states there are several thousand messages missing. They say this was highlighted to the LAA and not responded to.
- j) The provider highlights their duty to consider all evidence in support of the defence case. They say if they are not permitted to review the evidence properly this will severely hamper their ability to respond to evidence during the trial process.
- k) They say it is not reasonable to expect them to have to review this material and, they say, at an effective rate of 9 seconds per page if only allowed 320 hours.
- l) The original request on the 5.12.23 was for 3237 hours. In further submissions dated 20<sup>th</sup> February 2024, the provider acknowledged that the time claimed could be reduced to 30 seconds per page to read and 30 seconds per page to schedule, which would reduce the request to 2158.08 hours to review 129,485 pages of material served as evidence.
- m) The Provider states the LAA position to only pay 320 hours for 129,485 pages is disproportionate to the volume of evidence relied on by the Prosecution. To allow only 320 hours puts the defence in a position where they cannot properly prepare the defence case.
- n) It is further argued that the LAA have not provided a breakdown of how the figure of 320 hours has been reached and have not replied to the point of the missing messages in the excel spreadsheet.

**The LAA's representations dated 23<sup>rd</sup> April 2025 (I presume this should be 2024)**

- 7. The contract manager (CM) disputes the reasons given by the Provider in support of their appeal and they have made representations before the ICA. In summary they say:

- a) There is no dispute that the additional material served on the USB needs to be reviewed by the provider.
- b) Initially, 60 hours to view/listen to the video/audio material at grade B rate. This has not been disputed by the appellant.
- c) The initial request for 3237 hours (1.5 minutes per page) based on 1 fee earner working a standard 40 hour week would take 80.93 weeks or 1.56 years to read the material.
- d) Trial 3 is to be listed on the 24<sup>th</sup> February 2025.
- e) 320 hours were agreed for this task based on the CM's review of the material. The provider subsequently requested 1 minute per page reducing the request to 2,158.08 hours. This request was refused.
- f) The CM clarifies that the case is at stage 12 now and there has been a standing agreement that for documentary evidence, that which would have previously been served in paper, is to be remunerated at 30 seconds per page to read and 30 seconds per page for ancillary work but for electronic material requests would be considered on a case-by-case basis.
- g) The CM notes that most of the evidence served on the USB is in the format of Excell spreadsheets and depending on the layout the page count can dramatically change. Therefore, it does not represent a reasonable reflection of the data contained in the file. The CM refers to the cost judge decision SCCO Ref: 154/17, 155/17 and 177/17 (Regina vs Daugintis).
- h) Taking this into consideration the CM disputes the methodology of the provider's approach to reviewing this material. The CM then reviews the material and some items have previously been requested and time had been agreed in previous tasks. It is calculated that 82.23 hours had previously been agreed.
- i) A further review of the material reveals that items are served in Excel, Web and PDF format and concludes that these are

duplicates of the same document. This is disputed by the appellant.

- j) The case manager, by way of example, looks at SAM-03-08-10-2019-MC as this is the largest of the files in dispute with a notional page count of 74,916 for the entirety of the folders. The accompanying PDF document has a page count of 6,544. The appellant states that there are a considerable bundle of 'WhatsApp messages' included in the Excel and not the PDF document. The CM notes that this assertion has not been evidenced.
- k) The CM has checked the documents and spot checked 10 items and concludes the same items are present in both the Excel and the PDF files.
- l) The PDF document contains hyperlinks, when clicked they take you to the item in the relevant folder.
- m) The Excel document does not have this functionality and only contains the metadata to these files, however, Excel documents are created to give the user greater functionality when analysing data than a Word or PDF document. It allows users to filter the data, so only identified contact numbers or dates are brought up, sort data, so it appears in the order you require, and search data for specific contact numbers, dates, cell references, or post codes.
- n) The CM then references further costs judge decisions which comment at various ways of using the functions within Excel to search for information.
- o) The CM notes that the provider does not agree with this approach but considers it is reasonable that the defendant would be involved with conferences and be able to assist with advice on the material as required.
- p) The CM notes the appellant focuses on the [REDACTED] discs x 3 within their representations however notes that time was already agreed for these items as detailed in Annex A and as such he discounted them in his decision making.
- q) The CM comments that in his view it is not possible to renumerate at a rate per page and applies s4.33 of the 2022 VHCC Contract

Guide.

- r) The CM gives an example of previously allowing 42 hours, in this case, to review 133,148 pages of material in Excel format. The PDF version was 9,336 pages. The provider had requested 200 hours but this was refused.
- s) In summary, the CM states:

“Therefore, taking the above findings in relation to this specific material, agreements already being in place for sections of the material in question and previous agreements for similar material into account, I believe the 320 hours agreed for the task which equates to 1 fee earner working 8 standard 40 hour working weeks on nothing but this material as reasonable. My view being 20 hours to cross reference the material to confirm if there is anything new to that listed on the appellants request which to date has not been forthcoming. The remaining 300 hours to read for ancillary tasks relating to the material.”

#### The Issue

- 8. It appears that the sole issue for me is whether the LAA's decision on the above task is unlawful or unreasonable.

#### Discussion

- 9. The documents that have been placed before me indicate that there is one issue in dispute, the remuneration in relation to the work to be done: (i) whether it should be remunerated by reference to an amount of time per page or a block of hours.
- 10. The relevant guidance in relation to the consideration of the evidence in a VHCC case is set out in the 2022 VHCC Contract Guide Paras 4.30-4.34 of the 2022 VHCC Contract Guide, as far as relevant here, provides:

Consideration of evidence

***“4.30 In order to satisfy the “something significant about the crime” part of this criterion, it would be necessary to show either:***

*a) that central to the case were issues which raised novel and complex matters of law and/or procedure; and/or*

*b) central to the case were matters of unusual and complex fact.*

*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.*

4.32 Where the prosecution serves 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 transcript, full comment	2 minutes per page
Interview transcript, no comment	1 minutes 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”.*

11. It is clear therefore that the test that I have to apply here is whether the LAA's decision is unreasonable in Wednesbury sense. In ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation*** [1948] 1 KB 223, Lord Green defined the test of unreasonableness justifying the courts to intervene as a decision of a public authority that 'was so unreasonable that no reasonable authority could ever have come to it'.

12. I have considered parties' submissions with due care, but I take



the view that there is nothing unlawful or Wednesbury unreasonable with the LAA's decision to pay **320 hours at grade B** in respect of the time spent in considering the additional evidence on the USB. I will give my reasons below.

### **Reasons**

13. I note that the CM has authorised 320 hours as a block of hours at grade B in respect of the work to consider exhibits served electronically. The Provider disagrees with this decision and asserts that they should be given 1 minute per page (originally 90 seconds) in respect of both tasks, i.e., considering the documentary exhibits and undertaking any ancillary work necessary to advance the defendants case a trial.
14. The provider has argued that the material served cannot be reviewed in any other way other than page by page and to utilise any other method (such as search terms or filtering) would not allow them to properly consider the material and in turn would mean they are not able to properly represent their client. The provider has not provided any evidence in relation to the missing messages they say are not contained within the PDF version of the Excel spreadsheets.
15. The CM has responded to these submissions and have highlighted the difficulties in obtaining a page count from Excell documents. Having considered all the evidence, including the material which had already been allowed, the LAA have considered 320 hours at grade B as reasonable amount of time to consider the evidence in the context of the defendant's case.
16. I consider that the CM's decision to allow 320 hours is correct as a matter of law and it should stand. In my view, the Provider has failed to engage with the legal reasoning employed by the CM in support of their decision and its application of the 2022 VHCC Contract Guide to the facts of this matter. Para 4.31 of the 2022 VHCC Contract Guide provides that: "***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***".

17. In my judgement, the CM has fairly assessed the evidence before reaching a conclusion. 320 hours represents 8 weeks of 1 fee earner working 40 hours a week and in my judgment this is sufficient to review the material.
18. If, for any reason, the provider comes across a particular section which requires a more detailed review they are at liberty to apply to the CM for further consideration where they can identify this material and ask for further time, with justification. I do not agree with the approach taken by the provider to simply take the page count and multiply it by a minute per page, especially in relation to Excel material.
19. There is nothing wrong or Wednesbury unreasonable with the CM's approach in this case which allows a block of 320 hours to consider the additional evidence. A key consideration for the CM in agreeing time to be spent on each task is the reasonableness of the burden on the taxpayers. The Provider's submission ignores and/or fails to engage with this point.
20. I can only intervene if I am satisfied that the CM's decision is irrational or perverse in the Wednesbury sense. Although the Provider has not engaged with the test I must apply, it is clear from the substance of their submissions that they are asserting that the LAA's decision on the subject matter is unlawful or Wednesbury unreasonable. In ***R (Iran) & Others v Secretary of State for the Home Department*** [2005] EWCA Civ 982, Brook LJ at [11] held: *"...perversity represents a very high hurdle...it embraced decisions that were irrational or unreasonable in the Wednesbury sense..."*. His Lordship concluded at [12]: *"...far too often practitioners use the word "irrational" or "perverse" when these epithets are completely inappropriate. If there is no chance that an appellate tribunal will categorise the matter of which they make complaint as irrational or perverse, they are simply wasting time – and, all too often, the taxpayer's resources – by suggesting that it was"*.
21. Having considered the providers submissions in detail and the CM response I am satisfied that careful consideration was given by the CM in reviewing the request. I am also satisfied that the CM, in their response, have provided justification as to how they reach the

figure of 320 hours and in my judgement, this represents a reasonable amount of time to consider the type of material served.

Decision

- 21.** I will dismiss the Provider's appeal. There is nothing unlawful/Wednesbury unreasonable with the CM's decision.

[REDACTED]

LAA ICA/IFA

[REDACTED] May 2024