

LEGAL AID AGENCY
High Cost Crime Appeal Decision – Single Adjudicator

Case:	R V. [REDACTED]
Appellant (firm/counsel):	[REDACTED]
LAA Respondent:	[REDACTED]
Date of decision:	[REDACTED] December 2024

Case Manager's original decision:
Appeal allowed

Adjudicator's Decision:
 Reasons: <i>(The full reasons for the decision should be noted here, making specific reference to points raised at the appeal if necessary)</i>
<p>R v. [REDACTED] [REDACTED]</p>
<p>This is an appeal by the Provider, [REDACTED] acting on behalf of [REDACTED] against the LAA's decision dated 7th October 2024 in relation to the category of the case. The appellant has requested Category 1 Fraud in this case. The Case Manager has allocated this case as a category B case in the 2022 VHCC guidance.</p> <p>The appellant states that this case should fall within Block A Fraud cases and the matter in dispute is whether this case involves significant international dimension.</p> <p>In considering this appeal I have had sight of the following documents:</p> <ol style="list-style-type: none">1. 13th March 2024 – case category assessment sheet.2. 7th May 2024 – category representations3. 15th August 2024 – LAA category representations and further note to LAA on categorisation from [REDACTED] KC.4. 14th October 2024 – VHCC appeal reps form.5. 2022 VHCC Contract Guide.

6. VHCC Contract Category Assessment Sheet.
7. VHCC Appeals Response Form dated 25th October 2024 – [REDACTED]
8. Email dated 21st August 2023 from [REDACTED] to [REDACTED].

VHCC Contract Guidance 2022

The VHCC Scheme is a remuneration Scheme for Litigators and Advocates for cases in the Crown Court meeting the following criteria. The criteria are set out in the 2022 VHCC Guidance and the 2022 VHCC Specification.

Paragraph 4.12 of the VHCC Specification 2022 sets out the criteria that needs to be met to satisfy that category in which the case will be placed.

Category of case

4.12 The following guidance applies to Paragraphs 4.16 to 4.21 of both Specifications (and additionally 4.22 of the Specification (for organisations)).

4.13 **General** – in the case of each criterion, the defence team must show that the necessary factors are applicable to the case which their particular defendant has to meet and/or features of the defence that he or she will be putting forward. In a multi handed case, it would be insufficient to argue that any criterion applied to the case against a co-defendant, and therefore to the case in general.

4.14 Where the issue of category has been settled, either through negotiation with the Case Manager or following an Appeal, category will be reviewed only where there has been a material change in the case against the organisation's defendant.

4.15 Subject to paragraphs 4.13 and 4.14 above, the defence team may request a review of category at any time. The Case Manager may review category at the start of every stage.

Fraud cases – Block A

The defendant's case is likely to give rise to national publicity and widespread public concern.

4.16 In order to satisfy this criterion, it is necessary for a case to satisfy both limbs of this test: a) national publicity; and b) widespread public concern

- (a) For a case to satisfy “**national publicity**” the VHCC Case Manager would expect to see evidence that the case had triggered nationwide publicity. It would be likely that broadcast, print and electronic media would all show interest in such a case.

Coverage by a single publication or broadcast programme, or by local media alone, would be insufficient.

Although standard reporting restrictions might render coverage sporadic in some cases, the Case Manager would expect to see evidence that there was sustained

interest in the case at all stages of its life. It is recognised that a case of potentially high interest may receive little or no publicity because of blanket reporting restrictions. In cases like these, the Case Manager would take into account the type of publicity likely to be generated were those restrictions lifted, and the reasons for imposing them in the first instance.

- (b) For a case to satisfy “**widespread public concern**” it would be necessary to show that the publicity was triggered by issues of far reaching and significant concern, such as that which might trigger editorial debate. It would be insufficient to show that such concern was held only by a specific interest group or groups.

The Case Manager would expect to see evidence that these issues were directly related to the case and intrinsic to its substance, rather than peripheral to it or incidental.

The defendant’s case requires highly specialised knowledge

4.17 To satisfy this criterion, the Case Manager would expect that, as a prerequisite, practitioners must demonstrate a certain level of skill and expertise in dealing with large fraud cases, cases involving serious financial impropriety and complex financial transactions.

4.18 They would be expected to be familiar, or equipped to deal, with most matters frequently prosecuted by the Serious Fraud Office, Revenue and Customs Prosecution Office, Crown Prosecution Service, or any prosecution agency into which any of the above have been incorporated or are likely to be incorporated.

4.19 The defence team would need to show that a case meeting this criterion involved an area of skill and expertise outside the usual scope of a criminal fraud practitioner’s expertise, taking into account the expectations of skill and experience raised in paragraphs 4.17 and 4.18 above.

4.20 The defence team would need to show both that the defendant’s case required this skill and expertise, and that they were able to provide it in house. It would be expected that any putative highly specialised knowledge would go to the legal heart of the defendant’s case and would be of a significant level of complexity. Where experts are instructed to address highly specialised issues, the Case Manager would expect to see evidence that the outside expertise complements expertise within the firm, rather than obviating the need for it.

The defendant’s case involves a significant international dimension

4.21 To satisfy this criterion, the defence team would need to show that a particular aspect of their case preparation involved a non-UK element of either fact or law, or both.

4.22 For the international dimension to be deemed “significant”, the defence team would have to demonstrate it had a direct effect on their understanding of the case, and substantially affected case preparation.

4.23 With regard to a legal dimension, the need to understand the workings of non-UK

jurisdictions, substantial liaison with lawyers abroad or foreign authorities, or the need to understand and assess parallel or linked proceedings in foreign jurisdictions, would be persuasive factors.

4.24 For a factual dimension, the defence team would need to show that key elements of the offence were perpetrated abroad, and that in analysing these the defence team would require understanding of the workings of systems or institutions different from those in the UK.

4.25 Incidental details would be insufficient to meet this criterion, such as:

- The defendant is a foreign national
- There are foreign witnesses
- Goods or money have been received from, or deposited, outside the UK
- Introduction of Letters of Request

The defendant's case requires legal, accountancy and investigative skills to be brought together

4.26 To satisfy this criterion, the defence team must show that the preparation of the defendant's case is multi-disciplinary, and that all three skills are required and interrelated, and can be provided in house. Where outside experts, such as forensic accountants, are instructed, the Case Manager would expect to see evidence that the outside expertise complemented expertise within the firm, rather than obviating the need for it.

Appeal

In the appeal lodged on 14th October 2024, the appellant states "*As we now understand the three criteria in Block A had been met save for the criteria if a significant international dimension*" they proceed to set out the international dimension to the [REDACTED] case and how it has a direct effect on the understanding of their case against their client and how it would substantially affect the preparation of the case.

It is important at this stage to set out the background of this case. The client is charged with offences of Conspiracy to Defraud, 5 Counts of Fraud by False Representation, 1 Count of making and supplying articles for use in Fraud. The client is a financial consultant and was charged along with three other co-defendants following the collapse of [REDACTED] in 2019. An investigation took place by the Serious Fraud Office in 2018 [REDACTED]

The appellants state that [REDACTED] was AIM listed at the time of the conduct, which is being prosecuted, and as AIM is an international exchange there is a significant international dimension. The collapse of [REDACTED] and discovery of the fraud alleged by the SFO has had a significant impact on the international regulation afforded to us and subject to the AIM part of the London Exchange to enhance the market and regularly scrutiny. They cite various links which show the impact this has had nationally and internationally.

They state specifically at paragraph 8 "*A significant international dimension would have an impact on how Mr [REDACTED]'s case is prepared. A key aspect of his defence preparation will involve*

overseas enquiries, shareholders both national and internationally potentially suing [REDACTED] and a real prospect of [REDACTED] being sued in a foreign Court”.

They refer to an Italian case of Parmalat which they state suffered the same issues with black holes in accounts. They state that this is a precedent of US investors bringing civil proceedings in the US for their losses.

I have considered Counsel's Advice dated 15th August 2024. Counsel argues that there will be international media coverage as to whether accounting audit procedures are fit for purposes. There are international reports on this online, and these have been cited to the LAA in earlier representations. This is significant as it has a potential impact upon accountancy standards internationally is a matter that the Defence team will need to take into account when preparing and conducting the defence of the prospective client.

At Para 13 Counsel further refers to the case of Parmalat, and specifically counsel states “In presenting the current client's defence we will need to understand the law and exposures not only criminally in the UK, but also the potential civil liability and workings of non-UK jurisdictions (the US and Dubai in particular). Issues as to how disclosure works in foreign courts will be relevant, as well as consideration of the applicability of *autrefois*, and the admissibility of matters from the UK criminal proceedings. There is plainly a different dimension for each of the defendants: a. [REDACTED] is said to be the primary contact with [REDACTED]; he will therefore need to navigate this part of the SFO's case with particular care as he is liable to be the first to be added to any litigation by investors as a result of how [REDACTED] has cast its pleadings on the basis of an operative deception. b. [REDACTED] is senior to [REDACTED] in the accounts department, and therefore has a different emphasis to his defence. c. [REDACTED] & [REDACTED] – being the Chief Financial Officer and his wife – are more concerned with oversight failings.”

The Case Manager states in summary:

1. That the appellant has not provided any evidence that the client has been charged anywhere else apart from the Criminal Indictment.
2. The charges faced by [REDACTED] are separate to the charges faced by the client in this case. Even if the appellant needed to be aware of any charges against [REDACTED] it would not be significant enough to change the way in which the appellant prepares the client's case. Therefore, it follows that the Case Manager does not deny there are international elements involved in this case, however they are significant.
3. The Italian case of Parmalat would not substantially affect the defence case preparation in the client's case.
4. The Case Manager is not persuaded that any admission by the defendant in this case will impact upon the shape of the international lawsuit and vice versa with [REDACTED]. The Case Manager states this on the basis that no evidence has been provided to confirm the same.
5. The Case Manager further states that the potential evidence from international franchises on how Counsel prepared and how audits are concluded is not something that the appellant has provided any evidence for.
6. The Case Manager is not convinced based on the current charges faced by the client that there is a significant international dimension.

Analysis

There is only one point for me to consider in this appeal, and that is whether the criteria for significant international dimension have been met; as the case manager in his email dated 21.8.2024 agrees NPWPC, HSK and LAIS are met.

I am therefore required to determine whether the Provider's case satisfies the test within paragraph 4.21 – 4.25 of the 2022 VHCC Guidance.

In order to satisfy this criteria, the Defence need to show that a particular aspect of their case and the preparation involves an element of either fact or law or both (4.21) In this case the Fraud has been perpetrated on a national and international level, and specifically Counsel states at paragraph 12 of her Advice that it is a fact that any admission by the defendant in his SFO proceedings will impact on the shape of the international lawsuit and the outcome of the proceedings against [REDACTED] will have a profound impact on the defendants in this trial, but simply there is a real risk of international proceedings being brought against individuals regardless of who wins the current civil case.

Paragraph 4.22 sets out for an international dimension to be deemed **significant** the defence team would have to demonstrate it had a direct effect on their understanding of the case, and substantially affected case preparation. In this case, the appellants state that the international dimension is significant and cite various reasons in their submissions dated 14th October 2024 including inter alia that it would be significant because of the reasons set out in paragraph 1 – 6 of their letters dated 12th October 2024, and this would have a direct effect on the understanding of their client's case. They state a key aspect of the defence preparation will involve overseas enquiries. Specifically, they state *"Whilst it is accepted that it is not common in VHCC cases to have linked civil proceedings, this alone does not justify a SID, however, the evidence in these proceedings is vital to [REDACTED]'s overall case and how the case is put before a Jury"*. (Paragraph 8).

With respect to the legal dimension 4.23, the criteria require a need to understand the workings of a non-UK jurisdiction, substantially liaison with Lawyers abroad or Foreign Authorities, or the need to understand and assess parallel linked proceedings in a foreign jurisdiction would be a persuasive factor. In this case, there is evidence that the appellant would need to understand the workings of a non-UK jurisdiction, specifically they cite at paragraph 9 of their letter dated 12th October 2024 that there are investors in the [REDACTED] Group internationally. An open source there are 250 international shareholders who can sue [REDACTED] and/or defendants. They refer to the fact that the case is still alive in international lawsuit and [REDACTED] are defending their position on the grounds that those defendants including the appellant who have cases at Southwark deceived [REDACTED].

With respect to 4.24 factual dimension it from the facts in this case it has to flow that the collapse of [REDACTED] and discovery of the fraud alleged by the SFO would have had a significant impact on the international regulation afforded as they were subject to the AIM part of the London Exchange and that in the case preparation they will need to gather evidence to understand the workings of foreign institutions or systems different from those in the UK.

Decision

Having considered all the evidence and the submission made I am satisfied that this case meets the significant international dimension criteria as set out in 4.21 – 4.24 and therefore, this case should be categorised as a Category A Fraud case.

Single Adjudicator:

[REDACTED]

Date:

[REDACTED]

December 2024