

LEGAL AID AGENCY

High Cost Crime Appeal Decision – Single Adjudicator

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

Case Manager's original decision:

- (i) 30 seconds per page to consider and 30 seconds per page to complete any ancillary work in respect of exhibits
- (ii) Category 3

Adjudicator's Decision:

Appeal rejected.

Reasons:

(The full reasons for the decision should be noted here, making specific reference to points raised at the appeal if necessary)

R
v.
[REDACTED]
Single Adjudicator
[REDACTED] October 2024

- 1) I have been asked to adjudicate the appeal of R v [REDACTED] on behalf of [REDACTED] and I have carefully considered the appeal representations made by both the Appellant and the LAA. I have also reviewed the 2022 VHCC Contract Guide and 2022 VHCC Specification.
- 2) The Appellant represents [REDACTED] who is alleged to have operated a fraudulent investment scheme centring around the car leasing industry. The defendant was one of two joint directors of [REDACTED] Limited which operated as an investment scheme through several subsidiaries including [REDACTED] Ltd.
- 3) It is the prosecution's case Mr [REDACTED] made false representations to investors. The scheme was advertised as a '1:1' investment model, where one unit of investment equated to the purchase of one vehicle and these vehicles would typically be leased for a three-year term. During the investment term, investors would receive a monthly

payment and at the conclusion of the investment term there would be a lump sum payment to investors following the sale of each vehicle.

- 4) The prosecution alleges the defendants purchased insufficient vehicles to generate a return for every investor, as such the investments were not asset backed as advertised and therefore dishonestly made false representations to potential investors knowing that the representations were, or might be, untrue or misleading, and intending thereby to make a gain for themselves or another, or to cause loss to another or to expose another to risk of loss.
- 5) This appeal is concerned with two areas of issue:
 - (i) Rates for the review of pdf exhibits (task 11), the Appellant seeks a reading rate of 1 minute per page for pdf exhibits and 30 seconds per page to complete any ancillary work. The LAA has authorised 30 seconds per page for reading and 30 seconds per page for ancillary work.
 - (ii) Case category, the Appellant seeks a Category 2 classification whereas the LAA has authorised a Category 3.

Rates for exhibits

- 6) The LAA considers the current rates authorised to be reasonable with reference to section 4.32 of the 2022 Contract Guide which prescribes a rate of 30 seconds per page for exhibits. The LAA has considered the nature and complexity of the material and found many of the exhibits are repetitive so far, they are in a certain proforma with different information, and nothing observed suggests that this case requires a higher review rate. Further the Appellant's request for an increased rate lacks sufficient justification.
- 7) In appeal representations the Appellant states they are unclear how the case manager has reviewed the exhibitory material given access has not been granted to the digital case system and they have not provided any papers in this case by any other means. The Appellant, as part of this appeal, has provided a sample of material which they submit demonstrates the level of detail contained in some of the exhibits and the rate currently authorised provides insufficient time to consider the material. The Appellant submits several of the exhibits are handwritten and given the prosecution's case that the defendant was particularly involved in the administrative

and financial side of the company, every exhibit will be relevant to the defendant and will need to be considered in detail as opposed to simply being perused.

- 8) I have considered the sample material provided in addition to the Appellant's submissions and I see no reason to deviate from the LAA's decision. I agree the rates currently authorised are reasonable and the Appellant's submissions do not provide sufficient justification for an increase in rate. The sample material provided contains banking and investor material which includes a variety of financial documents and email correspondence. None of the pages contained a full page of text and several pages contained no relevant information (repeat email signatures/footers). Whilst I accept this is only a small sample of exhibitory evidence which totals over 44,000 pages and there will be other exhibits which contain much more detail and require a greater deal of attention, overall, taking a swings and roundabouts approach, I consider the allowance of 1 minute per page for both reading and ancillary work to be proportionate.

Category

- 9) Subject to this appeal is the LAA's decision to classify this case as a Category 3 whereas the Appellant seeks a reclassification to Category 2.
- 10) Section 4.22 of the 2022 VHCC Specification details the criteria for determining case category, further guidance is contained at 4.12 – 4.26 of the 2022 VHCC Contract Guide. Category 3 is the default category for fraud VHCCs, to achieve a Category 2 a case must meet specific criteria differentiated between Block's A and B. A Category 2 classification is achieved if a case meets at least two criterions from Block A and at least 2 a's or b's from Block B.

Block A

1. The defendant's case is likely to give rise to:
 - (a) national publicity; and
 - (b) widespread public concern;
2. The defendant's case requires highly specialised knowledge;
3. The defendant's case involves a significant international dimension;
4. The defendant's case requires legal, accountancy and investigative skills to be brought together.

Block B

1. The value of the fraud as described in the indictment and/or the prosecution case statement/summary exceeds:

- (a) £10m
- (b) £2m

2. The volume of prosecution documentation, which consists of:

- witness statements
- exhibits
- interview transcripts
- pre-interview disclosure/advance information
- Notices of Further Evidence ("NFEs") exceeds:
 - (a) 30,000 pages
 - (b) 10,000 pages.

Unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served.

3. The total costs of representing the defendant(s) are likely to exceed:

- (a) £500,000
- (b) £250,000.

4. The length of the trial is estimated at:

- (a) over 60 days.

11) It appears there is no dispute in the case satisfying the Category 2 criterion of Block B, the Appellant submits the case meets four of the 'a' criterion from Block B:

- (i) The value of the fraud as described in the indictment and/or the prosecution case statement/summary exceeds £10 million.
- (ii) The volume of prosecution evidence exceeds 30,000 pages
- (iii) The total costs of representing the defendant is likely to exceed £500,000
- (iv) The length of the trial is estimated at over 60 days

12) From the appeal documents provided I can confirm the value of the fraud exceeds £10 million and the volume of prosecution evidence exceeds 30,000 pages. I cannot confirm if the total legal costs will exceed £500,000 nor if the length of trial is over 60 days. However, for the purposes of determining the case category, two 'a' criterion have been satisfied from Block B.

13) In respect of the criterion from Block A the Appellant submits the case meets three of the criteria whereas the LAA's position is the case only meets one criterion, which is:

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

14) In agreeing this criterion has been met the LAA have stated examples or detail provided in support of this criterion cannot be used to meet another prong of the criteria.

15) It is the Appellant's position this case also satisfies the following two criterion:

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

(2) The defendant's case requires highly specialised knowledge

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

16) The Appellant has provided a range of press articles to demonstrate the national publicity generated in relation to the case. The Appellant submits articles are from a wide variety of news outlets including the Daily Mail, the Sun, the Telegraph and the Guardian. Further, the co-defendant had a significant public profile, having promoted various schemes via social media and news outlets and investors were from a variety of socio-economic backgrounds and the impact of the alleged criminality has caused concerns to several groups of people in society, spanning from the ordinary investor who has lost their lifesavings, to those working in the financial sector. This has been exemplified by the prosecution having been announced in Parliament in answer to a question about what steps the Attorney General's department has taken to increase prosecution rates for fraud and economic crime.

17) The Appellant also explains the prosecution is relying on several promotional videos to demonstrate what they seek to suggest are methods used by the defendants to reach multiple corners of society and induce innocent members of the public to invest in the scheme.

18) Further news articles are provided to showcase reporting at different stages of the case in response to earlier correspondence with the LAA regarding the need to show sustained reporting throughout all stages of the case.

- 19) The LAA's position is there is a lack of sustained interest in the case apart from what one would expect to see in most VHCC cases where articles are produced when defendants are first charged with the offence. The articles used in support are not from mainstream publications with the only mainstream publications of the Guardian and Telegraph dating back to 2021. Further, some of the articles only mention or deal with the co-defendant.
- 20) With regards to the articles provided in support to showcase reporting throughout the LAA's view is these articles are sporadic and often do not mention the defendant. It is necessary to focus on this case and this defendant to agree categorisation (4.13 of the Contract Guide).
- 21) Dealing with widespread public concern the LAA's position is the articles provided would predominantly be of interest to individuals who have an interest in cars, car sales and/or looking to the car sales area for investments and no evidence has been provided indicating publicity has reached such a stage that might trigger editorial debate. With such debate common to see in cases that warrant a Category 2 status as it would emphasise the importance and widespread concern of the case to the public.
- 22) I am not persuaded by the Appellant's submissions that this case is likely to give rise to national publicity and widespread concern. The Appellant has not sufficiently demonstrated sustained interest in the case at all stages of its life nor widespread concern, 4.13 2022 Contract Guide states:

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.*

I consider much of the publicity features the co-defendant as the focal point given his involvement in social media videos promoting the various investment schemes. The guidance is clear that criterion applies to a particular defendant, and it is insufficient to argue that any criterion applied to the case against a co-defendant also applies to the defendant.

Highly specialised knowledge

- 23) Sections 4.17 – 4.20 2022 VHCC Guidance details the elements that need to be satisfied to meet this criterion:

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.*

- 24) There appears to be no dispute regarding the Appellant satisfying 4.17, 4.18 and 4.20. The Appellant is a firm which has significant experience dealing with large fraud cases prosecuted by the SFO, HMRC, CPS and other prosecuting authorities. At issue is the Appellant demonstrating the case involves an area of skill and expertise outside the usual scope of a criminal fraud practitioner's expertise, considering the expectations of skill and experience as detailed at 4.17 and 4.18.

- 25) In appeal submissions the Appellant explains the case is legally complex and high value and requires an understanding and analysis of commercial insolvency procedures, commercial law, regulatory compliance and fiduciary duties, accounting

practices and contract law. The case involves intricate layers owing to the number of investors and the involvement of the FCA, HMRC and insolvency service, thus increasing the complexity of the case. Prior representations have suggested this case was akin to a Ponzi scheme which the Appellant submits can require highly specialised knowledge especially for the defence to demonstrate that this was not a Ponzi scheme.

- 26) Reference is made to another case which was assessed to be a Category 1 VHCC and I am referred to the prosecution's case summary to further highlight the complexity of the case including the levels of analysis undertaken by SFO investigators in relation to the number of investments made and alleged misuse of investor funds with total investor deposits of over £87 million across 6268 units sold.
- 27) The LAA's position is this case does not require highly specialised knowledge and a criminal solicitor with experience in fraud cases would already possess the requisite knowledge to handle the facets of the case presented. The issues raised are not uncommon in VHCC cases and the Appellant has not demonstrated that this case requires expertise beyond the usual scope. Fraudulent sales, as alleged in this case, are unfortunately common and a firm accredited as a VHCC provider with approved case supervisors would be expected to have sufficient experience and proficiency to manage these types of disputes effectively.
- 28) The category criteria are intended to differentiate cases that are particularly challenging to defend within the VHCC context, justifying a higher rate of remuneration. Therefore, the benchmark must be set at a level where only certain VHCC cases qualify.
- 29) The Appellant's submissions in respect of this criterion are rejected. Whilst I accept this is a complex large value fraud case the guidance is clear so far that to achieve this criterion a practitioner needs to show that the case requires an area of skill and expertise beyond the usual scope of a criminal fraud practitioner's expertise considering the expectations of skill and experience described at 4.17 and 4.18 of the Contract Guide. I do not consider this case requires skill or expertise beyond the usual scope and there is a prerequisite that practitioners must be familiar or equipped to deal with matters prosecuted by the SFO and be able to demonstrate a certain level of skill and expertise in dealing with large fraud cases, cases involving serious financial impropriety and complex finance transactions.
- 30) Overall, this appeal is rejected.

Single Adjudicator: [REDACTED]

Date: [REDACTED] October 2024