

VHCC Judgment (Single Adjudicator) – [REDACTED]

1. The Provider (P) appeals against the LAA's decision dated 15th February 2023 to reduce the number of hours in respect of *Stage 7 task list, Task 39 – Consideration of the Jury Bundle* from 30 seconds per page agreed on 17th November 2022 to group hours on 25th January 2023. They contend that this is unfair, and they should be paid at a rate of 30 seconds per page rather than block of hours in respect of the jury bundle material.

Relevant Facts

2. [REDACTED] is second on the indictment containing two counts of conspiracy to cheat the revenue in connection with Operation [REDACTED]. There are [REDACTED] other defendants.
3. It is the prosecution case that the defendants were involved in an alcohol diversion fraud on a massive scale between 2009 and 2010. Alcohol was purchased free of duty from bonded warehouses in France and removed from bond in a duty suspended state upon the false representation that it was to be transferred to another bonded warehouse in Germany. French duty, which is much lower than UK duty, was paid and the alcohol was removed from bond on the false representation that it was to be transported to French cash and carry. In fact, the alcohol was diverted to the UK under the cover of paperwork which purported to show that it was being sent to a UK bonded warehouse.
4. If the authorities showed an interest in a load when it arrived in the UK, it would be sent to a UK bonded warehouse and false documentation produced which purported to show that it came from a German bonded warehouse when in fact it had not. If there was no apparent interest evident from the authorities, the load would be diverted to a cash and carry, usually one of the [REDACTED] chain of cash and carry, and thus the duty payable was evaded. False paperwork was also created to make it look like the alcohol has been supplied UK duty paid to [REDACTED] (and other cash and carry) either directly by a "missing" trader or via a "buffer" company. The buffer traders sold what purported to be legitimate cash and carry, predominantly [REDACTED], who in turn sold it to wholesalers and to the public. [REDACTED] was a director and shareholder of the [REDACTED] group of cash and carry which was recipient of much of the illicit alcohol. The Excise Duty evaded is estimated to be well in excess of £20 million.
5. [REDACTED] denies entering into any criminal agreement. He had no knowledge that any transactions by any of the companies which it is alleged he controlled were intended to cheat the revenue. At all material times, he believed he was involved in legitimate businesses. It is denied that any stock purchased by [REDACTED] was illicit. The trial is in progress at [REDACTED] Crown Court having commenced in [REDACTED] 2022.

[a] The Case for the Provider

6. In their representations (reps) dated 24th February 2023 the Provider went into some detail to explain their position as to why the LAA was wrong to deny them payment at

30 seconds per page in respect of 28,914 pages in the jury bundle. In essence, they asserts that it was their understanding that the following was agreed for undertaking work in relation to the jury bundle: (a) 2 minutes per page for the Jury Bundle index comprising of 426 pages = 14.2 hours; (b) 30 seconds per page for the PDF content comprising of 5,165 documents and 28,194 pages = 240.95 hours; and (c) 1 hour per spreadsheet for 26 Excel worksheets = 26 hours. They went further and asserted that: *“Whilst we say a total of 281.15 hours were authorised, we have only spent 211.7 hours working on the Jury Bundle, which was necessary and reasonable. However, the Legal Aid Agency is only prepared to pay a total of 120.2 hours for this work including a block of 80 hours for the content comprising of 28,914 pages (less than 10 seconds per page) despite agreeing a rate of 30 seconds per page for the content at the outset”*.

[b] Case for the LAA

7. In their response to this appeal dated 08th March 2023 the LAA went into some detail in setting out the scope of their case in relation to this appeal. In their reps, they asserted that: *“The Senior Case Manager has confirmed it was his understanding he was agreeing a total block of 69.04 hours as a result of this email”*. They then went on to conclude *“to avoid the appeal process if we can, and I’d like to offer a compromise for you to consider of what I would have agreed if we had known the correct content of the bundle. I can agree 2mpp for the Jury Bundle Index, 80 hours for the pdf content based on 2 working weeks and 26 hours for the excel spreadsheets. This calculates to **120.2 hours at Grade B...**”*. The LAA’ compromise on this point was rejected by the Provider.
8. The appeal comes before me as a single adjudicator for a decision on the above dispute.

The Law

9. The relevant rules governing appeals against the LAA’s decisions in relation disputes regarding the number of hours within the submitted Task List is set out in Para 6.1 of the 2013 VHCC Specification. Para 6.1 provides: *“Where you disagree with a decision relating to those matters set out in Paragraph 6.4 below, made by us, you have a right to appeal that decision. Your appeal will be considered either by one member of the VHCC Appeals Panel on the papers, or a Committee, with the opportunity for you to attend and make oral representations. Any matter, which is referred to or heard by a member of the VHCC Appeals Panel or the Committee, may not then be disputed under Clause 27 and Clause 28 of the Standard Terms”*. In addition, Para 6.4(c) the 2013 VHCC provides: *“You have a right of appeal in accordance with Paragraph 6.1 on the following issues only:...(c) **hours in dispute within the submitted Task List...**”*.
10. The 2013 VHCC Contract Guide sets out specific considerations that the LAA has to bear in mind in deciding how best to remunerate the work done by a Provider, being it either a firm of solicitors or Counsel working on a VHCC contract. Paras 4.31 – 4.34 of the VHCC Guide, insofar as relevant to this appeal, provides the following guidance:

Additional guidance

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:

<i>Witness statements</i>	<i>2 minutes per page</i>
<i>Exhibits</i>	<i>30 seconds per page</i>
<i>Interview transcripts – full comment</i>	<i>2 minutes per page</i>
<i>Interview transcripts – no comment</i>	<i>1 minute per page</i>

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**... ”.*

The issues for the IFA

11. It appears that there are several issues to be addressed in context of this appeal, namely: (a) was the Provider's email of 15th November 2022 unclear; (b) if so, did the Senior Case Manager in his email dated 17th November 2022 decide to award the Provider 30 seconds per page in respect of 28,914 pages or 5,165 pages of Adobe documents; and (c) whether the LAA's decision dated 26th January 2023 to award the Provider only 83.24 hours, increased to 120.2 hours at Grade B on 15th February 2023 as a compromise to avoid the appeal process, was reasonable in all the circumstances of this case.

[a] Was the Provider's email dated 15th November 2022 'unclear'?

12. The first task for me is to decide whether the Provider's email dated 15th November 2022 was unclear, i.e., the number of pages they were referring to was 28,914 pages of the Jury Bundle rather than 5,165 pages of Adobe Acrobat documents? To address this issue, I need to look at the content of the Provider's email of 15th November 2022, the

Senior Case Manager's email of 17th November 2022 and the previous and subsequent communications which followed the agreement of 30 s/pp in respect of this task list.

13. The Provider's email dated 15th November 2022 provides: *"As you may recall the jury bundle served by the prosecution comprises of an index with 426 pages and the content has 28,914 pages. You previously agreed 2mpp to review the index, but wanted to know the type of documents that the content contained in order to assess whether it is appropriate to agree a rate per page or a block of hours. We are now in a position to confirm that the jury bundle comprises of 26 Excel Worksheets and 5,165 Adobe Acrobat Documents. Is there anything else you need to know if order consider authorising time for reviewing the content?"*
14. On 17th November 2022, given that the Case Manager was on annual leave, the Senior Case Manager responded to the Provider's email of 15th November and stated his agreement in the following terms: *"I can agree 30spp to check that the documentary material has been received previously. For the spreadsheets I can agree an hour per spreadsheet to check they too have been received."*
15. Having set out the relevant emails of 15th November and 17th November 2022, it may be necessary to look at the correspondence which preceded these emails. In their reps dated 08th March 2023 asserted: *"The Appellant initially approached the Case Manager regarding the Jury Bundle as part of the Stage 7 task list proposals. A page count was not provided at the time, but the Case Manager provided the standard VHCC page rates. The Appellant responded on 31st October 2022 as follows: "Jury Bundle - the prosecution have informed us that the bundle is "very large" (5.2GB) and that some of the spreadsheets to be included are too big to convert for uploading to Egress. In addition, they are still finalising the covert monitoring transcripts that they want to include so they are not yet in the bundle. We have established that, currently, the index is 426 pages, and the content is 28,914 pages". The LAA' reps then continued:*

"The Case Manager responded on 3/11/2022: Task 39 – trial documents – Opening note – thank you for the page count. Jury Bundle – thank you for alerting me to this. I can agree 2mpp for the 426-page Index at Grade B. In terms of the content, if it is spreadsheets etc, a block of hours would be more appropriate. Do you want to revert back to me when received and we can discuss further?"

*It can be argued here that the Appellant was made aware at this point, **that a block of hours was going to be agreed,** rather than a page rate for the content. This is common procedure on **VHCC's when the page count is extremely high and the block of hours from a page count thus becomes an unreasonable amount.***

The Appellant responded again on 15/11/2022 when the Case Manager was on annual leave and the request was allocated to the Senior Case Manager [REDACTED] in her absence. Please see above 'items in dispute' for the agreement made.

The Case Manager would argue the email request to Thomas Stevens was misleading and unclear with regard to the overall page count. It does not state that the total content of the Jury Bundle is 28,914 pages plus spreadsheets. It can be construed as 5,165 PDF documents, plus 26 spreadsheets which often make up the bulk of the page count. If the Senior Case Manager had been made aware of the correct page count of the documents, he would have agreed a more reasonable block of hours.

The Senior Case Manager has confirmed it was his understanding he was agreeing a total block of 69.04 hours as a result of this email.

*When the claim was submitted for audit, it was calculated and paid as 5,165 Adobe Acrobat Documents at 30 seconds per page = 43.04 hours and 26 hours for the Spreadsheets. The index was previously agreed by the Case Manager at 2mpp for 426 pages = 14.2 hours. A total of **83.24 hours paid**".*

16. Against this background, the Provider strongly disputes the submission made by the Case Manager that the email of 15th November 2022 was unclear. In their reps dated 24th February 2023, the Provider stated their position on this point in following terms:

*"It is **disingenuous** to say our email dated 15 November 2015[22] is unclear for the following reasons:*

- 1. It is unusual to provide page count for spreadsheets as it is often difficult to give an accurate figure that will fairly reflect the time it will take to consider them as they often contain a substantial volume of data. If the spreadsheet is scaled so that all the columns within the workbook fit on one page, it can be difficult if not impossible to read the contents or it can contain a lot more data to digest than a PDF page. If it is not scaled, then this can inflate the page count. It is for these reasons that a block of hours is normally agreed for spreadsheets rather than a rate per page, which is normally agreed for PDF documents. This is the approach taken in this case (and other VHCC cases) for considering the exhibits as the spreadsheets are unpaginated.*
- 2. The auditor's email dated 24 January 2023 shows that the Senior Contract Manager thought there were 5,165 pages of PDF documents rather than this being the number of PDF documents in addition to 26*

spreadsheets. On this basis, they were prepared to pay 30spp for 5,165 pages of PDF documents plus 26 hours for the spreadsheets.

3. When we first challenged the deductions, their concern seemed to be that the page count provided was inaccurate by requesting the full jury bundle so they could verify it. Having had the opportunity to do so, it was only then that they then said our email dated 15 November 2022 was unclear; three weeks after we queried the deductions”.

17. Having considered the evidence before me and the parties’ respective submissions, I take the view that the Provider’s email of 15th November 2022 was in fact unclear, if not confusing. I will not go as far as saying that the email of 15th November was ‘misleading’, but I will confine my finding on the issue of lack of clarity and confusion.
18. The Provider’ email of 31st October 2022 raised the issue of the jury bundle prep and indicated that they had established: “...*the index is 426 pages, and the content is 28,914 pages...*”. The Case Manager responded with his email dated 03rd November 2022 saying: “...*I can agree 2mpp for the 426-page Index at Grade B. In terms of **the content, if it is spreadsheets etc, a block of hours would be more appropriate.** Do you want to revert back to me when received and we can discuss further?*”. It is clear from the Case Manager’ email of 03rd November that he did in fact raise the issue of granting the Provider a block of hours in relation to the content of 28,914 pages. This email preceded the Provider’s email of 15th November 2022 where they repeat what they had stated in their email of 30th October 2022 that: “...*the jury bundle served by the prosecution comprises of an index with 426 pages and the content has 28,914 pages... We are now in a position to confirm that the jury bundle comprises of 26 Excel Worksheets and 5,165 Adobe Acrobat Documents*”. The email of 15th November conflates the index (426) pages and the content of 28,914 pages with the expression that: “*We are now in a position to confirm that the jury bundle comprises of 26 Excel Worksheets and 5,165 Adobe Acrobat Documents*”. I consider, looking from the background evidence and in particular the email of 30th October and 03rd November 2022, that the Senior Case Manager’ email of 17th November 2022 was responding to the Provider’ statement made in their email of 15th November 2022 that: “...*the jury bundle comprises of 26 Excel Worksheets and 5,165 Adobe Acrobat Documents*”.

[b] Was the Senior Case Manage agreeing 30 seconds for 28,914 and 5,165 pages?

19. Having concluded that the Provider’s email dated 15th November 2022 was unclear as to what they were asking for, the second issue is to consider whether the Senior Case Manager was agreeing 30 seconds per page in respect of 28,914 content pages and 5,165 Adobe Acrobat Documents? The answer to that question rests on the evidence which has been put before me and contextual interpretation of certain communications.

20. The Senior Case Manager has now confirmed it was his understanding he was agreeing a total block of 69.04 hours as a result of this email. The total blocks of 69.04 hours can be broken down into two components: (i) 5,165 Adobe Acrobat Documents at 30 seconds per page or 43.04 hours; and (ii) 26 hours for the Spreadsheets = 69.04 hours. Alternatively, the Senior Case Manager was allowing 43.04 block of hours for 28,914 pages of content and 5,165 pages of Adobe Acrobat Documents for an initial sift. This approach is consistent with the approach suggested by Para 4.34 of the 2013 VHCC Guide which provides that: “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”. It was of course open to the Provider, having used blocks of 43.04 hours agreed on 17th November 2022 to go back to the LAA and ask for additional hours if they could justify their necessity.
21. I reject the Provider’s submissions that on their ‘understanding’ of what the Senior Case Manager was agreeing on 17th November 2022 in respect of the work on the jury bundle: (a) 2 minutes per page for the Jury Bundle index comprising of 426 pages = 14.2 hours; (b) 30 seconds per page for the PDF content comprising of 5,165 documents and 28,194 pages = 240.95 hours; and (c) 1 hour per spreadsheet for 26 Excel worksheets = 26 hours, a total of 281.15 hours, of which they have only spent 211.17.
22. I consider that the Provider’ understanding of what was agreed in the email of 17th November 2022 to be misconceived and not grounded on the evidence. An observer, independent from the parties, who looks at the email of 15th November 2022, would not consider, taking into account the language used in that email, that the jury bundle was made up of (a) the content of 28,914 pages; and (b) 5,165 pages of Adobe Acrobat Documents. It would be impossible to read the Provider’s email of 15th November 2022 and implying an agreement by the Senior Case Manager of 240.95 hours at 30 seconds per page. If that was what the Provider was asking for, they ought to have made that clear by referring to point (a) and (b) rather than using loose language which serves to conflate and confuse the issues rather than clarifying or setting out a reasonable request.
23. But even if the Provider was asking for time to consider (a) the content 28,914 pages; and (b) 5,165 Adobe Acrobat Documents, I consider that blocks of 43.04 hours would have been sufficient for the initial sift of the material as set out in the 2013 VHCC Guide at [4.43]. I consider this approach to be reasonable and consistent with Para 4.31 of the 2013 VHCC Guide which provides: “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”. I reject the Provider’s submission that blocks of 43.04 hours for consideration of the material included in the jury bundle (both 28,914 pages of content and 5,165 Adobe Acrobat Documents) was insufficient. I bear in mind that by the time the fee earner was considering material in the jury bundle, they

were familiar with most, if not all, of the material which was included in it. The material included by the Prosecution in the jury bundle was extracted from the evidence presented before the jury either as part of the Prosecution's or the defence's case. Given that the fee earner can be reasonably expected to be familiar with the evidence in the case, then it would have taken him/her less time to consider the material included in it. Further, the LAA was entitled to take into account the costs of the task in question as well as the overall costs of the case and the reasonableness of the burden upon the taxpayers. The Senior Case Manager was only agreeing blocks of 43.04 hours in his email of 17th November 2022 and any other contention to the contrary is misconceived.

[c] Was the LAA correct to increase the number of hours from 83.04 to 120.02?

24. The last issue that I have to consider is born out of the LAA' decision dated 16th February 2023 to increase the number of hours from 83.04 assessed by the audit of 25th January 2023 to 120.02 hours as a 'compromise' to avoid an appeal to the IFA.
25. In their reps dated 08th March 2023 the LAA asserted: *"I would like to avoid the appeal process if we can, and I'd like to offer a compromise for you to consider of what I would have agreed if we had known the correct content of the bundle. I can agree 2mpp for the Jury Bundle Index, 80 hours for the pdf content based on 2 working weeks and 26 hours for the excel spreadsheets. This calculates to **120.2 hours at Grade B**. Please can I ask you to consider this compromise and let me know your decision."*
26. I have considered the LAA' decision of 15th February 2023 to increase the number of hours to the Provider from 83.04 to 120.02 to be rational and consistent with the 2013 VHCC Guide. As the Case Manager pointed out in his response to the Provider's appeal that the figure of 120.02 hours was based on 2 minutes per page for the Jury Bundle Index, 80 hours for the pdf content based on 2 working weeks and 26 hours for excel spreadsheets to be reasonable and proportionate to the scope of dispute in this case.
27. The Provider was simply wrong to reject this proposal without giving much thought to it. In their reps of 24th February 2023, the sole justification for refusing to compromise with the LAA on this point was that blocks of 80 hours for the content comprising of 28,914 pages amounted to less than 10 seconds per page. In their reps they asserted: *"Whilst we say a total of 281.15 hours were authorised, we have only spent 211.7 hours working on the Jury Bundle, which was necessary and reasonable. However, the Legal Aid Agency is only prepared to pay a total of 120.2 hours for this work including a block of 80 hours for the content comprising of 28,914 pages (less than 10 seconds per page) despite agreeing a rate of 30 seconds per page for the content at the outset"*.
28. I have dealt with what the Senior Case Manager was agreeing on in his email of 17th November 2022 and there is no need for me to repeat myself here. As for the essence of the Provider's argument that blocks of 80 hours for the content comprising of 28,914 pages amounted to less than 10 seconds per page, I consider that when the LAA

employs the block of hours approach, then the calculation based on pages per minutes simply disappears from the equation. Broadly speaking, the question for me is whether in employing the block of hours approach, the LAA acted unlawfully or unreasonably? For the reasons set out above, I have concluded that the LAA's decision of 15th February 2023 to employ the block of hours approach was neither unlawful nor unreasonable and the written submissions made by the Provider fail to convince me otherwise.

Decision

29. In conclusion, there is nothing unlawful or unreasonable with the LAA's decision dated 15th February 2023 to allow a block of **120.02 hours** in respect of this task. It follows from my conclusion on these issues that Provider's appeal in this matter is dismissed.

[REDACTED]
Independent Funding Adjudicator
[REDACTED] **March 2023**