

GFS Appeals Committee

R – V – [REDACTED]

Appeal of the refusal of the CPS to pay wasted preparation costs

Decision

1. Introduction

The case concerns a trial for Murder which was listed for a 12 day trial in [REDACTED]. [REDACTED] Counsel originally instructed in the matter was unable to conduct the trial.

The Prosecution advocate was [REDACTED].

The appellant has appealed the CPS decision not to pay wasted preparation in this case.

At the PTPH on 25 October 2017, the trial was fixed for 5th March 2018. On 28th November 2017 a letter was sent by the defence solicitors indicating that a guilty plea to murder would be entered. However, the letter stated that at this stage there had not been a full conference with the defendant.

A plea and sentence hearing was fixed for 14 December 2017. It is accepted by the CPS that the appellant undertook preparation work between the PTPH and this hearing.

On 4th December 2017, the appellant accepted instructions for another trial which was fixed for 19th February 2018, meaning that the appellant would no longer be available to conduct the trial in this case, fixed for March 2018.

On 14th December 2017, the defendant did not plead and the trial date for 5th March 2018 was maintained. At this hearing and at a subsequent hearing on 3rd January 2018, representations were made by the appellant to the court to move the trial to accommodate the appellant. The fixture was not moved.

With the agreement of the CPS reviewing lawyer, the appellant retained the brief and continued to work on the case until early February 2018 when the brief was passed to new prosecuting counsel.

The appellant has stated that it was entirely reasonable for the appellant to take other work during the trial window in March 2018 safe in the knowledge that this case would have been concluded by 14 December 2017. As a result on 4th December 2017, the appellant signed a binding agreement with the LAA requiring the appellant to act in a case listed from 19 February 2018.

The appellant submits that the return of this brief was not the appellants fault and the appellant did everything in their power to continue to act in liaison with the CPS including organising alternative counsel and drafting documents to comply with the CPS obligations of service and did so in consultation with the reviewing lawyer throughout.

The CPS has refused to pay wasted preparation as the criteria in paragraphs 283 to 288 of the Manual of Guidance have not been fully met. The CPS position is that this clash of cases was avoidable. The letter from the defence solicitors specifically indicated that a full conference had

not been held with the defendant. This meant that the appellant accepted another conflicting case prematurely before the defendant had formally entered a plea and before it was abundantly clear that he would do so. It is submitted that the appellant should in these circumstances have waited until the plea hearing before accepting another case for the trial period in this matter.

The CPS accepts that when the clash became apparent the appellant did try to move the fixture, but this would not have been necessary had the appellant not prematurely accepted the instructions for the second case and effectively this was too late. The CPS submit that the appellant is not entitled to a payment of wasted preparation in this matter.

The Appeals Committee have considered the written reasons letter from [REDACTED], Area Business Manager of CPS East of England dated 21 December 2018, papers submitted by the appellant, namely the note in support of the appeal against refusal of wasted costs dated 15 January 2019, the taxation note dated 21 February 2019 and a copy of RC/1 R [REDACTED] - log of hours for [REDACTED] – wasted preparation, and the relevant guidance as set out in the Graduated Fees manual of Guidance dated 5 February 2018

2. Findings

The Committee find that the relevant guidance in relation to this matter is set out in the Manual of Guidance at paragraphs 283-288 reproduced here for ease of reference.

Wasted Preparation Fee

283. This provision only relates to cases on indictment in the Crown Court.
284. This provision applies where the advocate has undertaken preparation work on a case that falls within the provisions of the GFS, but has to return the brief before the main hearing.
285. A wasted preparation payment will also be considered in two advocate cases where one advocate does not attend the main hearing. However, where the absent advocate is in receipt of a main hearing fee in the same case, wasted preparation will not be considered.
286. In the normal way, the principle that payment will not be made more than once for the same work, save in very exceptional circumstances, is applied.
287. A fee may be considered when the brief has been returned in one or more of the following circumstances:
 - a. Where the advocate has two or more cases listed in different courts, subject to providing written evidence that they have taken steps to rectify the problem, e.g. by contacting the CPS to agree the action to be taken. Written evidence should consist of a statement by the advocate setting out details of when instructions were accepted, when the case was warned or fixed or what steps were taken to avoid a listing conflict;
 - b. If the fixture is moved by the court in spite of the advocate's objections;

- c. If the advocate withdraws from the case with the leave of the court due to professional embarrassment;
- d. Where the brief is removed from the advocate;
- e. Where the advocate has a public duty e.g. sitting as a recorder.

288. The fee will only be paid if the following criteria have been met:

- a. The advocate must have undertaken 8 or more hours preparation work on the case;
- b. In jury trials the hearing must have lasted 5 days or more, or in a cracked trial the prosecution evidence must have exceeded 150 pages;
- c. A wasted preparation fee is not payable in a case which results in guilty pleas;
- d. The fee will be based on the number of hours of preparation that are accepted as having been reasonably undertaken, paid at the appropriate hourly rate for the grade of advocate instructed;
- e. In considering whether the hours are reasonable, account should be taken of all the relevant factors including the category of offence involved, the complexity of the case in terms of the number of pages of prosecution evidence and at what point the brief was returned in advance of the main hearing (it may not be necessary for the advocate to have undertaken substantial preparation work where the brief in a straightforward case was returned some weeks before the main hearing);
- f. The advocate claiming this fee should provide a written application to support the claim accompanied by detailed work records. The application should address the criteria set out in this paragraph;
- g. The application should include copies of relevant documents and details of the dates when the brief was received and returned or details of the hearing the advocate was unable to attend and when any abortive work was undertaken and, if appropriate, the reason why it was undertaken at that time;
- h. The amount of wasted preparation fee will be calculated from the number of agreed hours of work properly carried out, using the rates set out for hourly fees as appropriate to the category of advocate;
- i. The fee will only be considered at the conclusion of the case.

The Committee consider that the instruction of the appellant in the LAA case pre-dates the instruction by the CPS of the appellant in this case. As such the appellant should have anticipated a clash of dates. The appellant should not have accepted the instruction in this case or at the least notified their instructing solicitors (the CPS) of a possible clash when accepting the instruction in this case.

However it is accepted by the Committee that the appellant continued to be instructed and undertake work on this case after the clash became apparent.

The Committee therefore consider that wasted preparation for sixteen hours work be paid in this case

For the reasons outlined above this appeal is upheld.

Date – 27 February 2019