

GFS Appeals Committee

R-v- [REDACTED])

Appeal in relation to the correct payment of electronic evidence

Decision

1. Introduction

The case concerns allegations of fraud, which was dealt with at [REDACTED] Crown Court as a trial starting on 24th April 2018 and lasting for 32 days

The Prosecution advocates were [REDACTED], Leading counsel and [REDACTED], junior counsel

The case was an offence category K fraud under the Graduated Fee Scheme. The cut off point for an enhanced fee is 10,000 pages. The CPS determined that this trial should be paid as a standard base fee case. Both appellants have appealed that decision and maintain that the case should have been paid as an enhanced base fee.

It is the appellant's submission that all of the evidence in this case was uploaded onto the DCS system and therefore no distinction can be made between the 8,287 pages of statements and documentary exhibits served and the 3,900 pages of telephone records. The appellants have noted the fact that the material was on DCS rather than served on disc should mean that the material be counted towards the page count.

The CPS note that the Notice of Additional Evidence dated 06 June 2018 in this case shows 263 pages of statements, 8024 pages of exhibits, total 8,287 countable pages. There is also reference at the bottom of the document to 3,900 pages of digital evidence, provided as a notional page count and not included in the totals figure.

The CPS states that this is in accordance with CPS guidance on this point. This notional page count of digital evidence is provided to assist the Legal Aid Agency in determining the page count in accordance with their guidance. The CPS further note that it is clear in the document that the 3,900 pages do not count in relation to the CPS determination of the fees payable.

The Appeals Committee have considered the written reasons letter from [REDACTED], Court Business Unit, dated 14 January 2019, the appeal note by [REDACTED] dated 30 August 2018, a further appeal submission by [REDACTED], undated, a NAE dated 6 June 2018 and the relevant guidance as set out in the Graduated Fees Manual of Guidance dated 5 February 2018 and Fees Bulletin No 2 of 2018 (August).

2. Findings

The Committee find that the relevant guidance in relation to this matter is set out in the Manual of Guidance at paragraphs 74 and 62, reproduced below for ease of reference.

Electronic Material

74. Evidential material which is produced and served in an electronic format, such as images from a computer copied to disc or documents scanned on to disc, should be dealt with as follows:

a. Witness statements and records of defendant interviews formally served in evidence will always be counted as pages. If paper pages of exhibits are scanned and produced on disc for convenience, they should be counted as pages for the purpose of remunerating the advocate;

b. If, however, electronic media material, such as telephone data and billing, a copy of a computer hard drive or a CCTV recording, is served on disc, the advocate is paid for any reasonable time spent viewing the material at the appropriate GFS hourly rate. The advocate must provide detailed work records of all work undertaken in the case highlighting that work which relates solely to the review of electronic material.

Material that does not qualify as a page under paragraph 74(a) can never be treated as a page even if it is subsequently printed off in to paper format. However, any page that is printed directly from a disc and copied for use by a jury during an effective trial will be added to the page count subject to the principle that the same page will only be counted once.

Pages of Prosecution Evidence

62. Only pages formally served in evidence and copied to all parties either as part of the sending bundle or subsequently served under a written notice of additional evidence (NAE) can be counted, subject to paragraphs 66-68.

The committee found that the NAE dated 8 June 2018 accords with CPS instructions in setting out the evidence loaded onto DCS and the notional page count. It is clear from this document that the material that formed the notional page count is material served in accordance with paragraph 74b) of the manual of guidance and therefore not added to the page count for fee purposes. The Committee therefore finds that the case remains at the standard fee rate.

For the reasons outlined above this appeal is disallowed.

Date – 27 February 2019