

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] February 2025

Case Manager's original decision:

- (i) Case categorisation – Category 3

Adjudicator's Decision:

Appeal refused

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] February 2025

- 1) I have been asked to adjudicate the appeal of R v [REDACTED] on behalf of [REDACTED] Solicitors 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] and [REDACTED]. There are three further companies of relevance, [REDACTED], [REDACTED] and [REDACTED], all with financial or transactional links to [REDACTED] Limited.

- 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 the issue of case categorisation, the Appellant seeks a Category 2 classification whereas the LAA has authorised a Category 3.
- 6) 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.

7) It has been accepted the case satisfies the Category 2 criterion of Block B, with the LAA case manager agreeing three of the criterions from Block B have been met:

(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 length of the trial is estimated at over 60 days

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

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

9) 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. Specifically, agreement of the defendant's case requiring legal, accountancy and investigative skills to be brought together does not automatically satisfy the criterion for the defendant's case to require highly specialised knowledge.

10) 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

- 11) When considering this criterion there are two distinct limbs which must both be met, national publicity and widespread public concern. It is the Appellant's position that with this case being prosecuted by the Serious Fraud Office, that both limbs are automatically met given the SFO's involvement in only the most serious or complex cases where there is actual or intended harm to the public, or the reputation and integrity of the UK.
- 12) The Appellant has provided a range of press articles to demonstrate the national publicity generated in relation to the case, with articles from a wide variety of news outlets including the Daily Mail, the Mirror, the Sun, the Telegraph and the Guardian. The Appellant has also sought to demonstrate the defendant had a significant public profile and digital presence, having promoted various schemes via social media and news outlets. Individual investors have been identified worldwide including in France, Portugal, Hong Kong, Brussels and the USA and there is a significant number of everyday investors in the scheme who have suffered financial loss. This has been exemplified by the prosecution having been announced in Parliament in answer to a question about what steps the Attorney General's Office has taken to increase prosecution rates for fraud and economic crime.
- 13) Further news articles are provided to demonstrate 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. The Appellant's position is these articles show there has been sustained coverage from 2014 to date and further coverage was expected following the defendant's arraignment in December 2024.
- 14) 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 an 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 showing some sporadic reporting, with other articles not appearing to relate to this case or not mentioning the defendant. There was also no media coverage of the arraignment in December 2024.

15) Dealing with widespread public concern the LAA's position is VHCC cases in general are complex in nature thus necessitating over 60 days at trial, with a number of fraud related cases prosecuted by the SFO, however, this does not mean every VHCC case meets the criteria. In addition, no evidence has been provided indicating publicity or public concern 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. Cases such as the Hatton Garden robbery, the News of the World phone hacking scandal, or the Sarah Everard case demonstrates the kind of sustained media interest required to meet this criteria.

16) 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 to be sporadic with limited main stream publications on the case, including no main stream publication of the defendant's arraignment in December 2024, which would be expected had the case generated national publicity and widespread concern.

Highly specialised knowledge

17) 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.*

- 18) In appeal submissions the Appellant's position is with this being an SFO prosecution this criterion is automatically met and with the LAA already accepting this case requires legal, accountancy and investigative skills to be brought together, this automatically means the case also requires highly specialised knowledge.
- 19) There appears to be no dispute regarding the Appellant satisfying 4.17, 4.18 and 4.20. The Appellant is a firm which has experience dealing with cases of this nature. 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.
- 20) In appeal submissions the Appellant explains the case is unusual because the business model combines several different businesses under a single umbrella to carry out distinct operational functions. The alleged offences involve one specific company, yet the dishonest and fraudulent acts are alleged to have been carried out by another company. The legal trading relations between these companies and how they traded within the group with one another is a live issue in the case. These issues require expertise in dealing with investment fraud, asset back lending and inter and intra company trading and accounting.
- 21) Further, the inter-company trading within the group of companies gives rise to legal,

financial, accounting and operational complexity outside the scope of standard investment fraud, particularly Ponzi type schemes, whereby an investment vehicle is usually employed to obtain funds and does little or no activity pursuant to the investment. In this case however it is explained the core companies are trading significantly and the analysis and investigation of how these companies were set up, traded with one another, and accounted for the investment and leasing side of their businesses requires highly specialised knowledge.

- 22) This highly specialised knowledge includes an understanding of the application of car financing, car leasing, peer-to-peer asset back investments and car purchasing and trading all of which the Appellant submits is not within the everyday knowledge of barristers and defence teams undertaking this type of work.
- 23) 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 investments, 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 issues effectively.
- 24) The category criteria is 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. The LAA does not consider this case to meet that threshold.
- 25) 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.
- 26) Overall, this appeal is rejected.

Single Adjudicator: [REDACTED]

Date: [REDACTED] February 2025