

LEGAL AID AGENCY

High Cost Crime Appeal Decision – Single Adjudicator

Case: R v [REDACTED]

Appellant (firm/counsel): [REDACTED]

LAA Respondent: [REDACTED]

Date of decision: [REDACTED] August 202

Case Manager's original decision:

The Case Manager refused the advocate's claim for payment on the grounds that the required evidence had not been provided (although a small number of hours were allowed following the review).

Adjudicator's Decision:

Reasons:

R
v.

[REDACTED]

Single Adjudicator
(Date)

Introduction and background

1. The underlying criminal case involved allegation of a substantial VAT fraud and subsequent laundering of the proceeds.
2. A Representation Order was granted on 25 February 2010 to [REDACTED] who had instructed [REDACTED] Solicitors. They instructed [REDACTED] [REDACTED] (a barrister, and the applicant in this matter).

3. ██████ pleaded guilty to four counts on ██████ December 2010, which resolved the criminal allegations against him.
4. Following sentence, there were confiscation proceedings that did not conclude until ██████ March 2013.

Basis of claim

5. The case was a VHCC one. In total there were 15 stages for completed between 19 May 2010 and 23 June 2013.
6. At issue is most of Stages 2-15 (apart from Stage 3), which is almost the full payment claimed.
7. The advocate has provided the relevant spreadsheets for Stages 4 to 13 (from 24 November 2010 to 14 March 2013) that has 67 entries.
8. This included attendance at eight different hearings between ██████ December 2010 and ██████ March 2013.
9. The advocate has also provided the relevant spreadsheets for Stage 2 (from 07 June 2010 to 30 August 2010) that has 67 entries, that are duplicates of Stage 4 to 13.
10. This included attendance at three different hearings between ██████ June 2010 and ██████ July 2010.
11. The total amount of work claimed for is in excess of 800 hours.

The Case Managers Decision

12. The LAA conducted an audit of the tasks linked to the 67 entries on the

spreadsheet submitted. It is said that agreement in relation to only three of those (#13, 16 and 18) could be verified. Payment was made for those.

13. It was noted that claims should be made within 20 days of completion of the task. On any view, these claims were significantly out of time. It was recognised that there were factors in relation to this after 2016 where it could be said that the LAA was at fault, but this did not explain the delay before then (of at least three years).
14. The position of the Contract Manager is that there was no evidence that any of the work that is at issue had been authorised. As such, payment could not be made for those items.

Chronology

15. As noted, the work billed for was said to have been completed between November 2010 and March 2013.
16. The LAA caseworker has prepared a Chronology (Annex 1) which does not appear to be in dispute.
17. The current Case Manager took over the case in 2018 from K█. She confirms that the bill had been submitted in 2016 and 2017 and chased on 05 October 2017 (and possibly again in November 2017), with the advocate's clerk (C█) saying that it had been submitted 'some-time back'.
18. L█ wrote to C█ on 02 February 2018 stating that K█ had been absent from work since early 2017, and requested that any request for unpaid fees be sent to her, along with copies of the relevant agreements.

19. This was acknowledged three days later, with the advocate's clerk stating that the documents would be sent later that day.

20. Nothing was received, and so L■ chased three days later, but there was no response until October 2018 when C■ said that she had been absent for some time, but that the material had been sent prior to her absence.

21. Two days later L■ stated that she had not received this and, after making enquires, could not find any record of the material having been submitted but that she would review the further material sent. She also stated that electronic copies of the claim forms would be required.

22. Nothing further was heard for a year, when C■ emailed L■ requesting an update on this (and another) case. L■ responded three days later noting that there had been nothing heard for a year, and that the electronic claim forms was still outstanding. This was received later that month.

23. L■ responded to that on 06 November 2019 (just over a week later) stating that the advocate was required to sign the relevant declaration and requesting details of the Instructing Solicitor for a number of reasons, including to get the files from archive to ensure that all the correct documentation was in place. C■ replied that day with a signed copy of the claim form.

24. This was acknowledged by L■, but she also stated that they could not locate their file in the archive. In addition, she refers to a number of documents that are missing

25. C■ replied that day stating that K■ had been sent all the material, but

that they (the provider) had mislaid 'the later emails' following an office move. Later the same day a number of further messages containing confirmation of agreement by the LAA for work to be undertaken was provided.

26. These were acknowledged, but L■ stated that there were still a number of items claimed for that did not have confirmation of LAA authorisation. It was suggested that the solicitors instructed for ■■■■■ may be able to assist.

27. There was no further correspondence until 07 August 2020, some nine months later when C■ emailed L■ asking for an update. She stated that the solicitors had been contacted but that they had not been able to obtain anything due to the lockdown. L■ replied ten days later to say that the LAA was unable to do anything until she received copies of the relevant authorisations. Further, she could not access anything in hard copy due to the Covid restrictions.

28. C■ replied the next day saying that she would make further attempts to obtain the documentation.

29. There was then nothing further until 14 March 2022 (19 months later) when C■ emailed L■ requesting an update on this, and other, cases.

30. L■ replied the same day stating that the LAA would need a copy of the contract, the case category decision and the representation order. She confirmed that she could not locate the file in the LAA archive

31. There was no response to this until 30 May 2023 (14½ months later) when C■ contacted a Senior Case Manager (T■) requesting that he review a number of bills that were outstanding on different cases

(including this one).

32. T■ replied the next day asking for clarification of why the claims had been submitted late. The appellant was warned that if the LAA documents had been destroyed 'in line with GDPR' then there would not be anything that the LAA could do.

33. C■ replied on the same day stating that the claims had been submitted 'a long time ago but never determined and then the contract managers who have been dealing with them have gone off for one reasons or another', and that she had been chasing L■ since 2018.

34. A week later the appellant himself contacted T■ saying that he understood that his clerk had sent 'some of the material you will require' and offering further assistance as required. T■ replied the next day saying that L■ was dealing with the case, but was on leave that week. When she was back, he would speak to her and 'understand the chronology' before seeing 'what we can do now'.

35. He emailed again five days later to say that L■ was still waiting for for the material requested on 14 March 2022.

36. The appellant then responded on 23 August 2023 saying that the material had all been submitted 'years ago' and his clerk had regularly chased the LAA over this, although he believed that all the material would be there.

37. On 24 August 2023 T■ contacted the appellant to say that he had spoken to L■ and he attached the previous email setting out what information was required.

38. A week later the appellant's clerk contacted T■ to say that she was 'still trying to work through these as they were submitted so long ago' and some of the material may not be available. A copy of a payment application form from the solicitors that confirms the category of case.
39. There followed internal discussions between T■ and L■ it was confirmed that the LAA had a copy of the bill and the initial representation order, as well as some 'email agreements', although there was not a copy of the initial contact letter. Subsequently it was confirmed that the amended representation order (for the appellant as a leading junior) could not be found. It later transpired that this was an error and he was instructed as junior counsel only.
40. Following that, on 20 September 2023, L■ wrote to the LAA Contract Management and Assurance Team for guidance as to whether the documentation collated was sufficient for payment (in principle). They were subsequently told that it was, provided that this included all the relevant agreements.
41. On 02 October 2023 T■ wrote to the appellant's clerk to confirm this, and that payment could be made once the instructing solicitors confirmed that the appellant was the instructed advocate, then they could 'process payment for the tasks we can validate'.
42. There appears to have been a further, lengthy delay until 05 March 2025 (17 months) when L■ spoke to the appellant and advised him of the outstanding material that was required. C■ replied on 10 March 2025 sending the original (unamended) representation order and a document from the solicitor with the case category, along with a request for the claim to be assessed.

43. L■ replied re-iterating the LAA's position that they did not have all the required material which would need to be provided by the appellant in order for payment to be made.

44. Over the course of April 2025 the appellant's clerk sent confirmation from the solicitors that the appellant had been instructed following which, on 20 April 2025, a completed assessment of the claim was sent to the appellant.

45. A month later the appellant's clerk confirmed receipt of this, but said that this was substantially less than was expected, and so they would review the position.

46. Nothing further was heard until the beginning of August 2025 when there were attempts to set up a telephone call. This occurred on 06 August 2025.

47. On 09 September 2025 C■ stated that the appellant would be likely to appeal, but there were delays due to IT difficulties. There was then sporadic contact until 06 February 2026 when it was said that there would definitely be an appeal, although there were then further IT issues and extensions agreed for other reasons until 29 June 2026.

48. I have set the chronology out in quite some detail given the extensive delay.

Documents provided

49. As well as the chronology, I have been provided with Appendix 2, which is 50 pages of emails from 15 July 27 July 2010. These are between the LAA and the advocate's clerk, starting with a request to agree 10 hours for preparation and conference.

50. These are the following chains:

- 23 June – 24 June 2010 – unresolved in relation to the contempt proceedings, but LAA agreed 2.5 minutes per page and 1 minute to read and schedule the exhibits (pages 27-35).
- 15 July – 21 July 2010 - with 6½ hours, plus 50 pages at 2p a page, and a further 15 pages (double sided) at 2p a page (page 1-16 and 37-50).

51. In addition, there are copies of the spreadsheets of the work that was stated to have been undertaken.

52. I have also been provided with the indictment and an extensive case summary.

The grounds of appeal

53. The grounds of appeal are relatively short and set out the background to, and length of, the criminal case and the reasons why the appellant was instructed.

54. It is said that a task list was provided and agreed, with the spreadsheet of work undertaken giving details of when and how the agreement was given, and who gave it.

55. Further, it is said that, in fact, there was likely more work done over and above that. In light of that, the amount claimed was a significant underestimate. The appellant states that there was no doubt that the work was done.

56. It is said that a full file of emails and supporting evidence was re-submitted by 'tracked DX' (although the proof of this has not been provided) but appear to have been destroyed by the LAA.

57. In addition, the appellant's files were stored in a location that was flooded with the consequence that very little was retained. Further problems were caused by the fact that they had migrated to a new IT system.

58. However, whilst the claim was for just over 814 hours, only just over 62 hours were allowed. It is said that this is 'simply not fair or reasonable'.

The Case Managers Response

59. The Case Manager has responded to the grounds of appeal pointing out the relevant parts of the contract. It is noted that there were a number of delays by the appellant throughout the process. It is suggested that the appellant could have done more to chase the LAA throughout, bearing in mind that the target turnaround time for completed audits was 20 days.

60. It was made clear that it was not being said that the appellant had not undertaken the work that he had said that he had, but the issue was whether any of the items in dispute had been authorised, which would be a pre-requisite for payment.

61. In relation to the three hearings not paid, this was because the Court logs had been destroyed and it was not possible to show that they had happened.

62. In relation to Court hearing dates where payment was made but disbursements were not, this was because it was unclear what disbursements were being claimed, and not receipts had been provided.

63. Whilst it was unfortunate that hard copies of documents had not been kept, this was in line with GDPR requirements. In any event, the

previous correspondence suggested that this did *not* contain a full record of all work agreed.

The relevant terms of the contract

64. Where an advocate is dissatisfied with a decision of a Contract Manager, there is provision for an appeal under Annex 14 of the Contract.

65. This allows for appeals against a number of decisions as set out in para 2.1. This includes the right to appeal:

a) individual tasks disputed on the submitted Task List;

c) hours in dispute within the submitted Task List

e) disbursements

66. There is no doubt that there is power for an appeal in this case.

67. In determining an appeal (para 7.9 and 7.11) the Committee may have regard to the contract, but not any earlier decisions of the Committee.

68. Para 1.10, Annex 4 sets out the timetable that an advocate should adhere to in relation to claiming for work undertaken.

69. This includes (point 1):

The Audit Bundle must be submitted to the CCU within 20 working days of the stage end date

70. There is provision (para 1.1) for extensions to be granted by

agreement.

71. Para 1.10 also states *'The CCU will not pay for any VHCC Work that is not specified in a Task List, except where permitted by this Contract'*.

72. Annex 8 of the Contract is headed 'Payment and Disbursements'

73. This includes

1. Payment

1.1 Payment for work on VHCCs, where the Representation Order is granted on or after the Panel Start Date, will be governed solely by the terms of this Contract.

1.2 All payments for VHCC Work must be claimed in accordance with this Contract. You may only claim payment for VHCC Work under this Contract. You may not claim payment for VHCC Work under any other payment scheme.

1.3 All claims for payment for VHCC Work (including, for the avoidance of doubt, VHCC Work conducted by Non-Panel Advocates) will be audited by us. The audit of VHCC Work is to determine whether it was actually and reasonably done and whether it was within the hours agreed and specified in a Task List.

1.4 Under this Contract, we will pay you for VHCC Work specified in a Task List which you and any Non-Panel Advocates instructed (where permission has been granted by the CCU)) have delivered. Payment will be made after the end of each stage.

1.5 For the avoidance of doubt, the CCU will not pay for VHCC Work

that is not agreed in advance and confirmed as such as set out in this Contract, unless one of the following exceptions apply:

a) it arises from the service of further papers in a category of documentation already agreed ...

OR

b) it falls within an item agreed in a Task List (and certain conditions apply)

OR

c) it arises as an 'emergency' piece of work

d) it is work by an Advocate undertaken during the trial, including preparation undertaken during the course of the court day and/or work ordered by the court.

1.9 Payment is subject to our receiving the required Audit Bundle at the end of a stage, as this triggers the payment and is necessary to allow us to monitor this Contract.

1.17 If you or any Non-Panel Advocates instructed by you have spent more hours providing the VHCC Work than is authorised under this Contract, you will not receive payment for such hours unless one of the exceptions set out at clause 1.5 above applies.

74. Neither side have referred to any further material in their submissions.

Findings

75. There was no challenge to the Case Manager's conclusion that only three tasks could be verified as having been agreed on the material that is currently in existence.

76. I have set out the chronology above. What is clear is that there have

been extensive delays since the conclusion of the case.

77. In fairness, some of these at least can be laid at the door of the LAA. However, there are significant periods of time where the matter seems to have 'gone to sleep' due to inaction by the appellant.

78. The initial claim itself appears to have been submitted three years out of time.

79. From the change in Contract Manager in 2018 examples of the further delays include a year from October 2018 when L ■ had requested material that was needed for billing, and 19 months from the summer of 2020 to 14 March 2022.

80. I will not repeat all the periods of delay, as they are set out above in the chronology. The reasons for all these delays have been unexplained in the grounds of appeal.

81. Given that the timeframe for billing is a matter of weeks after completion of the task, these delays (which are extensive) are extremely lengthy.

82. It was clear from 2019 that the LAA had told the appellant that they could not locate their file in their archive.

83. The fact that nowadays material will be destroyed after a period of time (typically six or seven years) is well known. Given that the Crown Court proceedings concluded in 2013, there would have been a clear risk that, by 2019, the files were at risk of being destroyed.

84. In those circumstances, I consider that the appellant should have been mindful of this and taken steps to ensure that copies (paper or electronic) of all relevant items were kept until the billing had been resolved.

85. Instead, there appears to have been no attempt to collate the material required, or to chase the LAA and keep the case active.

86. I note that the spreadsheet provided records the method and date of agreement. However, that is not sufficient for the LAA to carry out the necessary audit.

87. In any event, most of the agreements are by email, which the appellant would have had access to in 2019, or at least until the flood (the date of which is not identified in the representations).

88. The terms of the contract are clear, and would be well understood by anyone undertaking VHCC work. There is a requirement to bill promptly, as well as to evidence the LAA's agreement for the work undertaken. However, neither of these could be said to have been the case here.

89. In this case, it is not a question of a short delay of days, or weeks but a number of different delays amounting to more than a decade after the conclusion of the case.

90. In addition, the contract provides a specific mechanism by which any bill should be proved, and that is by getting prior agreement of the LAA in the format set out in the contract.

91. There is no alternative means of doing so set out in the contract. Nor is there a general discretion for the LAA (or for me on an appeal) to bypass the terms of the contract and accept such an alternative means.

92. It is not a question of the appellant's honesty (which is accepted). The difficulty that the appellant has can be seen in the fact that he originally (in 2023) claimed at leading junior rates. However, two years later it was accepted that that was incorrect and it should be at junior alone

rates.

93. This shows the importance of an audit procedure in establishing the correctness of the claim, when something as significant as whether there was a junior could have gone unnoticed.

94. Whilst I accept that it is certainly more likely than not that some of the items claimed for have been authorised, I could not be satisfied (on the balance of probabilities) that any particular item in the spreadsheet had been authorised in advance in the absence of any of the documentation.

95. I accept that the appellant may feel aggrieved about the outcome. However, it flows from the terms of the contract.

96. I should say that if there was a discretion to be exercised, this is not a case where the appellant was a few days (or even a few weeks) out of time. Instead, there were repeated delays amounting to many years which has led to the situation that neither he, nor the LAA, have the proof that is needed.

97. In that sense, the appellant could be said to have been 'the author of his own misfortune' and it would be reasonable (and not unfair) to refuse payment for that reason.

Conclusion

98. Whilst it may appear harsh to the appellant, for the above reasons the appeal is dismissed.

Single Adjudicator: [REDACTED]

Date: ████ **August 2026**