

VHCC Categorisation Criteria – Total volume of Prosecution documentation does not include unused material

The Committee held that although the phrase “Prosecution Documentation”, as referred to in Block B of the criteria and rates, was not defined anywhere in the criteria, the Committee was assisted by reference to a section in Archbold dealing with fees for advocacy in the Crown Court. Paragraph 6-240, section 1(2) of Schedule 4 defines Prosecution evidence as including “all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal or served Prosecution documents or included in any Notice of Additional Evidence”. In defining the words “Prosecution documentation” as set out in Block B of the criteria, the Committee adopted the definition in Schedule 4, paragraph 1(2). The Committee ruled therefore that the phrase “Prosecution documentation” does not include unused material and as such in this case the volume of Prosecution documentation did not exceed 10,000 pages and this criteria was not met.

9th December 2002 – Appeal by counsel
LSC Decision Upheld

Representation Orders – CCU cannot go behind the Representation Order

The assisted defendant had the benefit of a Representation Order authorising the instruction of a QC and Junior Counsel. The instructing Solicitors had to date been unable to secure the services of Leading Counsel and Junior Counsel had been representing the Defendant alone. It was argued by the Appellant that he should therefore be paid at the rate of Junior Counsel acting alone rather than the rate of led Junior Counsel. The Committee felt unable to go behind the Representation Order and held that Junior Counsel could only be remunerated at the rate of Junior Counsel being led.

9th December 2002 – Appeal by counsel
LSC Decision Upheld

VHCC Categorisation Criteria – National publicity & widespread public concern and Highly Specialise Knowledge

The Committee did not feel that the case would give rise to the level of national publicity and widespread public concern required to meet this criteria. It felt that although there had been some coverage of the case in the Daily Mirror, Nottingham Evening Post and on the DTI website, this publicity stemmed largely from a particular interest which the Daily Mirror had in this case. The prosecution had come about largely due to an investigative piece of writing in the Daily Mirror. In addition to this it was not felt that the case would provoke widespread public concern and it was unlikely that the case would have any effect on the police or other regulatory regimes. The criteria of National Publicity and widespread public concern was not therefore held to be met by the Committee

The need to assess the interrelationship of insolvency and regulatory aspects of the alleged fraudulent trading did amount to highly specialised knowledge. The Committee held that the criteria of highly specialised knowledge was met

The Committee upheld the overall decision of the Contract Manager in the assessment of this case at category 3.

21st January 2003 – Appeal by solicitor
LSC Decision Upheld

Payment of work undertaken which was not previously agreed

The LSC authorised the attendance at Court of an expert to assist counsel for one full day. The expert actually attended court for four days and the additional three days attendance was

not discussed with or agreed by the Contract Manager. The additional three days attendance was therefore not paid by the Contract Manager.

The Appellant contended that clause 19 of the Contract Specification should be read so as to allow an appeal retrospectively on any costs or disbursements, irrespective if agreed beforehand with the Contract Manager in a stage plan. The Committee did not accept that this was the correct interpretation of the Contract (paragraph 9) and Contract Specification when read as a whole and therefore the Committee upheld the decision of the Contract Manager not to pay for the additional three days attendance.

20th February 2003 – Appeal by solicitor

LSC Decision Upheld

VHCC Categorisation Criteria – Consistency of category across different co-defendants within the same case

In a three handed conspiracy case, two out of the three defendants legal teams were categorised at category two. The appellant argued that in the interests of fairness and consistency, the same criteria should apply to their case.

The Committee held that as the criteria for category two were not met (specifically three out of the four criteria in block b) the decision of the contract manager should be upheld and the category of case for this particular defence team should remain at category three.

19th January 2004 – Appeal by counsel

LSC Decision Upheld

VHCC Categorisation Criteria – National Publicity and Multiple Victims

The LSC had categorised the case as a category four. The appellants argued that the case was a category three. There were two Block A criteria that were not accepted.

- (i) The case is likely to attract national interest
 - (ii) If the offence is of a violent or sexual nature, there are multiple victims or if a single victim, there is something significant about the crime. If the case involves drugs, their total value is estimated to exceed £10M.
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- (i) The panel viewed the indictment and case summary and noted that the appellants were unable to produce any evidence of reporting save for limited local reporting. The panel upheld the contract managers decision and found that this case did not meet this particular criteria.
 - (ii) The reference to the word 'offence' relates to the class 1 or class 2 offence as detailed in the first of the block A criteria. The panel found that this case did not involve multiple victims, there was only one victim, the murder victim. The Public Order Act offences are not victim offences and the conspiracy to commit GBH again had no victim. The offence of conspiracy is the agreement to cause GBH and the panel noted in this case that the intended object of the conspiracy was never located by the Defendant. Having also viewed the case summary the panel concluded that this was a single victim case.

19th January 2004 – Appeal by solicitors

LSC Decision Upheld

VHCC Categorisation Criteria – Does counterfeiting currencies and traveller's cheques constitute a fraud case for the purposes of the use of the case categorisation criteria?

A group of nine defendants were accused of playing differing and significant roles in the large-scale manufacture and distribution of a number of counterfeit currencies and traveller's cheques. The Appellant argued that for the purposes of case categorisation, the fraud criteria should be applied to this case.

The Committee held that counterfeiting of this kind did not constitute a fraud and therefore the Commission were correct to apply the non-fraud criteria when determining the category of this case.

9th February 2004 – Appeal by solicitors and counsel
LSC Decision Upheld

Reading Time - Request for a second fee-earner to read all of the served evidence following the resignation of the original fee-earner and request for additional preparation time where there are two indictments in a case, based on the same served evidence

The Committee did not consider that a man of modest means should be asked to face the burden of paying for a second fee-earner to undertake work already paid for in relation to another fee-earner in the particular circumstances of this appeal.

Despite the fact that there were two trials in this case, the Committee did not consider that this justified two fee-earners separately preparing for each trial and that this would involve unjustified duplication.

16th March 2004 – Appeal by solicitor
LSC Decision Upheld

Reading Time – Unused Material

Both trial counsel requested 2 minutes per page to read all unused documentation in addition to the A grade instructing solicitor. The Committee disallowed the appeal on this point stating that such a request would result in unnecessary duplication and expense to the public purse and in effect would grant both counsel several hundred extra hours to perform the same task as the grade A fee earner.

The Committee suggested that consideration instead be given by the LSC to allowing trial counsel a small, fixed number of hours to undertake a preliminary view of the unsifted unused material to establish how the task might best be divided between all members of the defence team.

29th April 2004 – Appeal by counsel
LSC Decision Upheld

VHCC Categorisation Criteria – Total volume of Prosecution documentation does not include unused material

The appellant sought to have the category of case changed from 3 to 2 by including the unused material in the prosecution documentation page count. The Committee held that the phrase “prosecution documentation” in the VHCC case categorisation criteria was limited to served documentation upon which the prosecution seek to rely and that served unused material did not fall within the definition for the purposes of the criteria.

29th April 2004 – Appeal by counsel
LSC Decision Upheld

Representation Orders – Counsel’s Role Going behind the Representation Order

The assisted defendant had the benefit of a Representation Order authorising the instruction of a QC and Junior Counsel. The instructing Solicitors had to date been unable to secure the services of Leading Counsel due to a profession wide dispute between the LSC and the Bar during this period. Junior Counsel had been representing the Defendant alone. It was argued by the Appellant that he should therefore be paid at the rate of Junior Counsel acting alone rather than the rate of led Junior Counsel.

The Committee held that in the specific circumstances of this case, it had not been appropriate or possible to instruct a QC and therefore the appellant should be remunerated at the rate of junior alone.

4th May 2004 – Appeal by counsel
LSC Decision Overturned

VHCC Categorisation Criteria – Value of drugs exceeds £10million

The appellant argued that the street value of the drugs seized was in excess of £10 million and therefore for the purposes of categorising the case, this criteria was met. The Committee felt that the only evidence revealed by the paperwork was the valuation of the drugs by the Prosecution which stood at £8.5 million.

The Committee felt unable to go behind the Prosecution valuation and therefore upheld the decision of the Contract Manager.

4th May – Appeal by Solicitors
LSC Decision Upheld

VHCC Categorisation Criteria - Back-dating re-categorisation of a case

This appeal dealt with the date upon which recategorisation of the case became operative for calculating payment of leading Counsel's fees.

Leading Counsel was assigned to the relevant Representation Order on 16 July 2003 and signed a Barrister Acceptance Form on 22 December 2003. Ultimately the contract manager had re-categorised this case from category 4 to category 3 (non-fraud) with effect from 21 November 2003. The appellant sought payment of his fees at category 3 rates for the entire period 16 July 2003 to 21 November 2003.

The Committee agreed that in the circumstances of this case the appeal should succeed and particularly noted that it appeared that the client of the appellant (who was first on the Indictment) was alleged to be the prime mover behind a highly sophisticated conspiracy to import substantial quantities of Class A drugs into the United Kingdom, and other co-defendant contracts in this particular case had been classified as category 3 (non-fraud) from the outset.

15th June 2004 – Appeal by counsel
LSC Decision Overturned

Full or half daily rates for advocacy

The issue in this appeal was whether 3.1 hours of advocacy should be paid at the full or half daily rate for counsel. Under the footnote of page 17 of the Contract Specification, it states that the full daily rate will be paid where the advocate is in court for more than 3.5 hours.

The Committee took this to mean time spent actually in court engaged in advocacy and therefore on the facts of this case the time spent in court was less than 3.5 hours and therefore the Committee felt that the Contract Manager was right to pay the half daily rate in this instance.

28th June 2004 – Appeal by Counsel
LSC Decision Upheld

VHCC Categorisation criteria – trial length

The appellants disagreed with the trial estimate made by the court, which was between 10 and 14 weeks. They submitted that the trial would last over 20 weeks, which may have led to

this case being re-categorised from category 2 to category 1. The Committee held that they could not go behind the official court estimate in this case, and they were not persuaded that the court's estimate was in this case incorrect.

22nd July 2004 – Appeal by solicitor and counsel
LSC Decision Upheld

Category Change Effective Date

At the time of signing the VHCC contract the case fell into the category four criteria. The volume of papers had not exceeded 5000 pages. The case was recategorised on 9th February 2004. This was the date the contract manager was notified that the papers had exceeded 5000 pages. The appellants argued that the recategorisation should have been retrospective to the start of the contract.

The Committee held that this case was correctly re-categorised from 9th February 2004. The panel accepted that part D 5.4.6 of the CDS manual applied in this case and that there therefore should be no retrospective re-categorisation.

4th August 2004 – Appeal by Solicitor
LSC Decision Upheld

VHCC Categorisation Criteria – Appellants costs reach over £200K

The panel were asked to examine whether the appellants costs were likely to exceed £200K for the purposes of categorisation. The appellants argued that in calculating this total the contract manager should take into account previous defence lawyers case costs (from the period when the client was represented by a different firm of solicitors). On the particular factors of this case the panel took the view that the total defence costs should have included the previous defence lawyers costs and that as a result were likely to exceed £200K.

7th September 2004 – Appeal by Solicitor
LSC Decision Overturned

VHCC Categorisation Criteria – Appellants costs reach over £200K

The appellant sought clarification on whether the criterion that “total costs of representing the defendant(s)” referred only to the client(s) represented by an individual solicitor, or to all the defendants in the case.

The Committee was satisfied that the “total costs of representing the defendant(s)” is a figure which relates only to the defendant or defendants being represented by the solicitor in question as opposed to all the defendants in the case.

11th October 2004 – Appeal by Solicitor
LSC Decision Upheld

Experts Travel Costs

The Contract Manager refused to pay travel costs of £120 / hour to a neurological expert instructed by the solicitor.

The Committee felt that there was a well-established convention in publicly funded work that experts should be remunerated for travel time at between 50% and two-thirds of their hourly rate for preparation. In the absence of any statute or subordinate legislation giving guidance on this point, the Committee felt that this was a sensible and proper starting point for travel costs to experts where public funds are being expended.

The Committee wished to comment that even if they were wrong about this, they did not think that the sum claimed by the expert could be viewed as a reasonable fee for travel time.

11th October 2004 – Appeal by Solicitor

LSC Decision Upheld

Payment Rate for attendance at trial of co-defendants

The appellants argued that they needed a B grade fee earner to attend the trial of co-defendants in the same case who were being tried separately. They argued that the B grade fee earner should be paid the full preparation rates for this attendance, rather than the attendance at court rates because the work they would be doing would be of a preparatory nature as they would be assessing the impact of evidence given in that trial on their own defendants case which was set down for trial immediately after.

The Contract Manager refused to pay the full preparation rates for this work but did agree for B grade attendance at court at the rate of £34 / hour (attendance at court rates).

The Committee held that the most appropriate and cost effective method of conducting this work would be to instruct a noting brief. However, in the particular circumstances of this case, they agreed to the attendance of a B grade fee earner for certain portions of the trial but they did not agree that this type of work warranted payment at the full hourly preparation rates.

2nd December 2004 – Appeal by Solicitor

LSC Decision Upheld

Representation Orders – CCU cannot go behind the Representation Order

The assisted defendant had the benefit of a Representation Order authorising the instruction of a QC and Junior Counsel. The instructing Solicitors had not yet instructed a QC and it was argued by the Appellant that he should therefore be paid at the rate of Junior Counsel acting alone rather than the rate of led Junior Counsel. The Committee felt unable to go behind the Representation Order and held that Junior Counsel could only be remunerated at the rate of Junior Counsel being led.

8th December 2004 – Appeal by Counsel

LSC Decision Upheld

Status of fee earner

The appellant argued that a fee earner with 3½ years experience of criminal defence casework should be classified as a B grade fee earner.

The Committee did not feel that 3 ½ years experience of criminal defence casework was sufficient for the appellant to be regarded as a B grade fee earner and further this experience did not comply with the requirements as set out in the Contract Specification.

8th December 2004 – Appeal by Solicitor

LSC Decision Upheld