

Cost Judge decisions re. Pages of Prosecution Evidence

There have been a number of recent Costs Judge decisions regarding the validation of Pages of Prosecution Evidence (PPE). A number of providers have subsequently submitted claims and redeterminations without the necessary evidence in support of the PPE that has been claimed. In submitting these claims, providers have sought to rely on the decisions of R-v-Ibefune, R-v-Burbidge and, in particular, R-v-O’Cuneff where the Costs Judge expressed the opinion that *“in my view, very considerable weight should be given to the figure agreed in the Crown Court at the end of the case”*.

The LSC has reviewed these and other Costs Judge decisions and does not believe that any of these decisions warrant a change to the LSC’s processes or the published guidance.

The LSC’s primary responsibility is to ensure that payments are accurate. With respect to PPE, this means that all pages must fall within the definition provided in Paragraph 1(2) of Schedule 2 of the Criminal Defence Service (Funding) Order 2007. In order to ensure PPE is accurately claimed, the LSC is currently asking providers to submit objective evidence of the PPE such as copies of the paginated statement and exhibit lists and any Notices of Additional Evidence cover sheets that contain the running PPE. **This remains a mandatory requirement.** In the event that the provider has not been served with necessary supporting documentation, the provider should inform the LSC who can then liaise with the prosecuting authority and validate the PPE. If the provider disagrees with the number of PPE supported by the evidence then they are entitled to ask the Litigator Fee Team to review the decision by submitting form LF2. If the LSC request further evidence to support the PPE then they should submit this with the LF2. If they do not have any further evidence then the LSC will contact the prosecuting authority to confirm the final PPE for the case.

The LSC, or subsequently a Costs Judge will only include pages in the PPE count when satisfied that the pages do in fact qualify – regardless of the count agreed in court. This is supported by a number of recent Costs Judge decisions.

In the case of *R-V-Ibefune*, whilst Master Campbell was *“satisfied that all of the documents for which a PPE count has been made are correctly claimed”*, this conclusion was drawn *“having been through the material submitted “and “because they fall within the definition of PPE.”*

Similarly, in the case of *Gkamos*, Master Gordon-Saker considered the solicitor’s submission that *“the ‘further material’ supplied by the prosecution should be included in the page count, namely 20 pages of Greek antecedents and 123 pages relating to a prosecution in Canada.”* Master Gordon-Saker concluded that:

“While these documents were undoubtedly served by the prosecution, they are not witness statements, exhibits or records of interviews and do not fall within the definition in sub-paragraph 1(2).

That counsel was apparently paid on the basis that there were 333 pages of prosecution evidence, the number of pages agreed at count, cannot I am afraid affect my decision.”

Accordingly, the fact that an advocate may have been paid for pages that did not qualify (as PPE), or that these pages were included in an ‘agreed’ PPE form, does not bind the LSC to accept the ‘agreed’ page count unless we are satisfied that the pages do, in fact, qualify as PPE.

We will continue, therefore, to validate PPE claims against objective evidence such as NAE cover sheets and paginated lists. We will not accept claims or redeterminations for PPE that are based on either the amount that has been agreed in court or paid to the advocate in the case – unless these claims are supported by the necessary objective evidence.

This note should be read in conjunction with the specific written reasons provided on the claim outcome in each case.