

ENGLAND AND WALES / JUDGMENT

R v Asare

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IN THE HIGH COURT OF JUSTICE SENIOR COURTS COSTS OFFICE Neutral Citation No . [2025] EWHC 2122 (SCCO) Case No: T20230825 SCCO Reference: SC-2025-CRI-000023 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 8 August 2025 Before: COSTS JUDGE LEONARD R v ASARE Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 Appellant: Stephen Akinsanya (Counsel) This Appeal has been dismissed for the reasons set out below. COSTS JUDGE LEONARD

1. The Appellant barrister was instructed as a leading junior advocate representing Moses Asare (“the Defendant”) in the Crown Court at Snaresbrook. Mr Will Paynter was instructed as led junior.
2. The Defendant was charged with five counts of cheating HMRC, with three counts of furnishing false information, and with concealing, converting or transferring criminal property. By virtue of a representation order made on 20 June 2023, as amended on 8 June 2024 to authorise the instruction of two junior counsel, he had the benefit of legal aid. His advocates are entitled to remuneration for their work under the provisions of the Criminal Legal Aid (Remuneration) Regulations 2013, as in effect at that date.
3. This appeal concerns the fees payable to Mr Paynter for his advocacy. Due to provisions of the 2013 Regulations to which I shall refer, it is of necessity brought on his behalf by the Appellant.
4. The question is whether, for a period of 8 days between 18 November and 27 November 2024, when Mr Paynter represented the Defendant in the Appellant’s absence, Mr Paynter should (as the Appellant submits) receive the fees due to a leading junior. The Legal Aid Agency’s Determining Officer has found that Mr Paynter is due only the lesser fee payable either to a led junior, or to a junior acting alone. The Regulations
5. The provisions of the 2013 Regulations, in so far as material, are as follows.
6. Regulation 2, which deals with interpretation, reads: “advocate” means a barrister, a solicitor advocate or a solicitor who is exercising their automatic rights of audience in the Crown Court... “instructed advocate” means... where the section 16 determination provides for representation by a single advocate, the first barrister or solicitor advocate instructed in the case, who has primary responsibility for the case... or... where the section 16 determination provides for representation by more than one advocate, each of... the leading instructed advocate... and the led instructed advocate... “representation order” means a

document which records a section 16 determination... “section 16 determination” means a determination made under section 16 of the Act that an individual qualifies for representation for the purposes of criminal proceedings... “trial advocate” means, unless otherwise provided, an advocate instructed pursuant to a section 16 determination to represent the assisted person at the main hearing in any case...’

7. Regulation 4, which deals with claims by advocates, reads: ‘(1) Claims for fees by a trial advocate in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 1 to these Regulations.
 - (2) A claim for fees under this regulation and Schedule 1 must be made by each trial advocate....
 - (8) In this regulation, where the main hearing is a trial, “trial advocate” means an advocate who... is instructed... to represent the assisted person at the trial, and... attends the first day of the trial...’
8. Schedule 1 to the 2013 Regulations include this definition: “substitute advocate” means an advocate who is not an instructed advocate or the trial advocate but who undertakes work on the case...’
9. Paragraph 26 of Schedule 1, dealing with payment of fees to a trial advocate, reads: ‘(1) In accordance with regulation 23 the appropriate officer must notify each trial advocate of the total fees payable and authorise payment to the trial advocate accordingly.
 - (2) Payment of the fees in accordance with sub-paragraph (1) must be made to each trial advocate.
 - (3) Where the section 16 determination provides for representation by a single advocate, the trial advocate is responsible for arranging payment of fees to the instructed advocate and any substitute advocate who has undertaken work on the case.
 - (4) Where there are two trial advocates for an assisted person, payment must be made to each trial advocate individually, and—
 - (a) the leading trial advocate is responsible for arranging payment of fees to the instructed advocate and any substitute advocate who have undertaken work on the case of a type for which a leading advocate is responsible; and
 - (b) the led trial advocate is responsible for arranging payment of fees to the instructed advocate and any substitute advocate who have undertaken work on the case of a type for which a led advocate is responsible. (4A) In this paragraph, where the main hearing is a trial, “trial advocate” means an advocate who—
 - (a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and
 - (b) attends the first day of the trial...’

10. The Defendant's trial started on 26 September 2024. It became increasingly clear that the Appellant would be unlikely to be able to be present for the whole trial, which was initially scheduled to conclude by the end of October but continued into November, ultimately concluding on 29 November 2024. This conflicted with a trip to Japan already booked by the Appellant for 18 to 27 November 2024.
11. The trial Judge permitted the Appellant's absence, knowing (says the Appellant) that he had the permission and confidence of his professional and lay client to leave Mr Paynter to step into his role. This, says the Appellant, was not automatic. It was in part because Mr Paynter is an experienced junior, called in 2002. A more junior Barrister might not have had the confidence of the Court.
12. The Appellant was not present at the trial between 18 and 27 November 2024 inclusive, returning to the case on 28 November for the last two days of the trial. Mr Paynter conducted the defence in his absence.
13. On 4 December 2024, Mr Paynter claimed his fees for a 47 day trial at led junior rates and the Appellant claimed his fees for a 38 day trial at leading junior rates. Both claims were paid. On 11 December 2024 a supplemental fee claim was submitted, seeking payment to Mr Paynter at the leading junior rate for 8 days of attendances between 18 and 27 November 2024 inclusive (with a balancing reduction of 8 trial attendances from his initial claim at the led junior rate).
14. This supplemental claim was refused on the basis that Mr Paynter had acted as led junior, and never as leading junior, in the case. The Determining Officer found that the Appellant, between 18 and 27 November 2024, would already have determined the overall strategy for the case in advance and was still Mr Paynter's leader. She observed that in cases where the court extends representation orders to allow for two advocates, it is expected that (as in this case), on occasions where the leader is unable to attend court the led junior will represent the client and allow the case to continue without delay.
15. The only situation that the Determining Officer could identify that would indicate that Mr Paynter had taken over as leading junior would be if he continued to represent the Defendant to the end of the trial as leading junior, with another advocate stepping into his place as led junior. That was not what had happened. At most, Mr Paynter, between 18 and 27 November 2024, acted as junior alone. Since the fees payable to a led junior and a junior alone are the same, that brief change in status made no difference to the fees payable to Mr Paynter. The Appellant's Submissions
16. The Appellant says that during the time he was away, because of a general shortage of barristers, there was no more junior barrister available to assist by stepping into the led counsel role. Had anyone done so, it is highly unlikely (given the terms of the representation order) that the LAA would have taken issue with two fees being payable for the as two roles being performed by the leading and this led junior.

17. In the circumstances, the Appellant submits that there is nothing in the 2013 Regulations or in principle wrong with a leading junior fee being payable to Mr Paynter for the period when he conducted the offence alone.
18. The Appellant was not available for the first two days of the trial. No claim for Mr Paynter as leading junior is made for those two days. It is accepted that this is normal. The leading junior may join a trial late, whilst for example juror empanelment, the management of which is reasonably part of the led junior role, is being dealt with.
19. The point at which the Appellant left was a sensitive part of the case. The Defendant was in the middle of his evidence. The trial was still going on by the time the Appellant had concluded his trip and he stepped back into the leading junior role for the final two days, which coincided with the conclusion of the Judge's summing up, the jury going out and the verdict.
20. While the Appellant was away, however, Mr Asare was being cross-examined by his co-defendants, then faced cross-examination by the Crown. This required careful monitoring by Mr Paynter of the questioning, interjecting where necessary, followed by the re-examination of the Defendant.
21. Mr Paynter was then involved in the two days of discussions on the law, both in Court and by exchanges of email between the parties and the Judge, as well as the Route To Verdict document. These involved extensive submissions on a lengthy directions document.
22. Mr Paynter prepared and delivered an hour-long Defence Speech for the Defendant. Whilst there had been some discussion of the speech before the Appellant left, it was still written and delivered by Mr Paynter, just as he would in any trial he was conducting.
23. All of this was work which would normally be undertaken by the leading junior. It is consistent with the role of a leading junior, which was the role actually undertaken by Mr Paynter.
24. By reference to paragraph 26(4)(a) of Schedule 1 to the 2013 Regulations, the Appellant submits that, between 18 and 27 November 2024, Mr Paynter was in the position of 'any substitute advocate who...' (has) '... undertaken work on the case of a type for which a leading advocate is responsible' and should be remunerated as such. Conclusions
25. I appreciate that Mr Paynter, during the eight days of the Appellant's absence, undertook a great deal of hard work that would normally be within the province of a leading junior. I can understand that he thinks it only fair that he be remunerated accordingly.
26. It is well established however that the 2013 Regulations must be applied mechanistically. The fee payable does not necessarily reflect the amount or importance of the work done by an advocate.

27. This appeal rests primarily upon the proposition that because Mr Paynter, over an 8- day period, undertook work that would normally be undertaken by a leading junior, he should be remunerated for those days as a leading junior. The question however is whether, over those 8 days, he actually was a leading junior, and he was not. At no point did he lead another junior. Whether that was because there was a shortage of potential substitute led juniors, or whether it was for any other reason, is not to the point.
28. As the Determining Officer says, on the facts of the case Mr Paynter, between 18 and 27 November 2024, could only be regarded either as a led junior representing the Defendant in the leading junior's absence, or (arguably, but it makes no difference for the purposes of this appeal) as a junior acting alone.
29. As for the submission that Mr Paynter could be regarded as a 'substitute advocate who have undertaken work on the case of a type for which a led advocate is responsible', I am unable to accept that because the definition of a substitute advocate to which I have referred unequivocally provides that a substitute advocate cannot be an instructed advocate or a trial advocate. Mr Paynter seems to me to have been both. In any case, the wording upon which the Appellant relies relates only to the distribution of fees, not to their amount.
30. For those reasons, this appeal must be dismissed.

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