

ENGLAND AND WALES / JUDGMENT

R v Bignell

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IN THE HIGH COURT OF JUSTICE SENIOR COURTS COSTS OFFICE Neutral Citation No. [2026] EWHC 2495 (SCCO) Case No: 41B21058724 SCCO Reference: SC-2026-CRI-000066 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 30 September 2026 Before: COSTS JUDGE LEONARD R v BIGNELL Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 Appellants: Lloyds PR Solicitors This Appeal has been dismissed for the reasons set out below. COSTS JUDGE LEONARD

1. This appeal from the Legal Aid Agency’s Determining Officer is governed by the Graduated Fee provisions of the Criminal Legal Aid (Remuneration) Regulations 2013. Schedule 2 to the 2013 Regulations governs payment to Litigators (typically defending solicitors such as the Appellant, Lloyds PR Solicitors) under the Litigators’ Graduated Fee Scheme.
2. The Appellant represented Martikka Bignell (“the Defendant”) in the Crown Court at St Albans. The issue on this appeal is whether the Appellant should be paid the Graduated Fee appropriate to a trial that has started, or to a cracked trial (as defined below). The Appellant has been paid for a cracked trial, but maintains that a full trial fee is payable.
3. Paragraph 1(1) of Schedule 2 provides definitions that are pertinent for the purposes of this appeal: “...‘cracked trial’ means a case on indictment in which—
 - (a) the assisted person enters a plea of not guilty to one or more counts at the first hearing at which he or she enters a plea and—
 - (i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and (ii) either— (aa) in respect of one or more counts to which the assisted person pleaded guilty, the assisted person did not so plead at the first hearing at which he or she entered a plea; or (bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the first hearing at which he or she entered a plea, declare an intention of not proceeding with them...”
4. “Trial” is not defined in the 2013 regulations, and in many cases (including this one) the question of whether a trial fee or a cracked trial fee is payable will depend on whether a trial had begun in a “meaningful sense”, the test identified by Mr Justice Spencer in Lord Chancellor v. Henery [2011] EWHC 3246 (QB).

5. Whether that is so will depend upon the facts of the case. At paragraph 96 of his judgment Spencer J set out the principles by reference to which a court can determine the question: “(1) Whether or not a jury has been sworn is not the conclusive factor in determining whether a trial has begun.
 - (2) There can be no doubt that a trial has begun if the jury has been sworn, the case opened, and evidence has been called. This is so even if the trial comes to an end very soon afterwards through a change of plea by a defendant, or a decision by the prosecution not to continue...
 - (3) A trial will also have begun if the jury has been sworn and the case has been opened by the prosecution to any extent, even if only for a very few minutes...
 - (4) A trial will not have begun, even if the jury has been sworn (and whether or not the defendant has been put in the charge of the jury) if there has been no trial in a meaningful sense, for example because before the case can be opened the defendant pleads guilty...
 - (5) A trial will have begun even if no jury has been sworn, if submissions have begun in a continuous process resulting in the empanelling of the jury, the opening of the case, and the leading of evidence...
 - (6) If... a jury has been selected but not sworn, then provided the court is dealing with substantial matters of case management it may well be that the trial has begun in a meaningful sense.
 - (7) It may not always be possible to determine, at the time, whether a trial has begun and is proceeding for the purpose of the graduated fee schemes. It will often be necessary to see how events have unfolded to determine whether there has been a trial in any meaningful sense.
 - (8) Where there is likely to be any difficulty in deciding whether a trial has begun, and if so when it began, the judge should be prepared, upon request, to indicate his or her view on the matter for the benefit of the parties and the determining officer... in the light of the relevant principles explained in this judgment.” The Case Law
6. Given that the issue of whether a trial has started is fact-specific, and given that the difference between a Cracked Trial fee and a Trial fee may be substantial, Costs Judges have heard many appeals from Determining Officers on the issue. 7. 8. 9. In many of them, as in this appeal, the question turns upon whether the court was, before the relevant defendants pleaded guilty, dealing with substantial matters of case management. The Appellant has referred me to a number of Costs Judges’ decisions in that respect, but bearing in mind that such decisions are necessarily fact specific I do not need to refer to all of them. I will however repeat here a summary I have given in similar appeals of what appear to me to be the most pertinent decisions and of the principles the underlie them. It seems clear that in Lord Chancellor v. Henery Spencer J, in using the words “the court is dealing with substantial matters of case management”, had it in mind that (at a stage where at least a jury

had been selected) the trial Judge would be called upon to make some sort of ruling or rulings. In *R v. Wood* (SCCO 178/15) Costs Judge Simons found that this was a prerequisite to a finding that a trial has started on that basis.

10. Costs Judges' decisions are, however, not binding. Costs Judge Whalan, in *R v Cox* and *R v Pipe*, and Costs Judge Rowley in *R v Sallah* (SCCO 281/18, 18 March 2019) took the view that the resolution of substantial matters of case management by the parties at the direction of or with the approval of the trial Judge, could justify the conclusion that the trial had begun in a meaningful sense.
11. In my view the decision of Costs Judge Simons in *R v. Wood* is very much in line with the guidance of Spencer J in *Lord Chancellor v. Henery*. It does not necessarily follow that decisions such as *R v Cox*, *R v Pipe* and *R v Sallah* are not. The point of those judgments, as I understand them, is that there will be circumstances in which there is no material distinction to be drawn between substantial case management undertaken by the court and substantial case management delegated to the parties by the court.
12. Those decisions do however appear to have been misinterpreted on occasion in support of the proposition that commonplace, pre-trial ironing out of issues in court between Prosecution and Defence can justify the conclusion that a trial has started in a meaningful sense, whereas on any realistic view they fall within normal pre-trial preparation.
13. Similarly, the negotiations and agreements on plea that are typical of a last-minute cracked trial have occasionally been referred to in support of the proposition that a trial has, nonetheless, started.
14. There is nothing in *Lord Chancellor v. Henery* to support any of this. The Background
15. The case against the Defendant was that between November 2023 and February 2024 she, along with co-defendants Karl Beaumont, Robert Pither, and Daniel Harley operated a "county drugs line", supplying crack cocaine. The Defendant was said to have used mobile telephones to communicate with Class A drug users, arrange street deals, and send out bulk "advertising" messages.
16. On 18 January 2024, plainclothes officers stopped the Defendant and Beaumont. The Defendant had in her possession a mobile phone and a wrap of crack cocaine. Beaumont possessed a pouch containing multiple wraps. A subsequent search of the Defendant's residence revealed £560.02 in cash. Following her arrest, the Defendant was interviewed and largely provided "no comment" responses, though she admitted possession of the single wrap for personal use.
17. The Prosecution's evidence relied almost entirely on comprehensive electronic communications data, CCTV, mobile phone downloads, and financial records. The call data established contact between the co-defendants and demonstrated that numbers attributed to them sent bulk advertising messages for drugs on a regular basis.

18. The Defendant pleaded not guilty to two counts of possession with intent to supply, and of supplying, crack cocaine. Trial was listed for 26 August 2025 with a time estimate of four to five days.
19. I have a transcript of the proceedings that started on Tuesday 26 August 2025 at 3:25 p.m. before Ms Recorder Morey and concluded the next day before Mr Recorder Stern KC.
20. On 26 August the court was advised (in summary) that whilst the Defendant continued to contest the case, Beaumont would be entering a guilty plea which would reduce the trial estimate to two days. The Judge indicated that her availability for a trial was uncertain.
21. The remainder of the 23-minute hearing was largely taken up with Beaumont's guilty plea and consequential matters. The judge then referred back to the Defendant's case and indicated that she would stand it down to see whether she or another judge would be able to preside over the Defendant's trial. The judge indicated that the most that could be achieved that day, assuming that she herself were to take the case, would be to swear a jury. That does not appear to have happened.
22. Instead, on 27 August, the case came before Mr Recorder Stern KC at 3:53 p.m. The Judge was advised that a basis of plea had been agreed for the Defendant. The Prosecution (as with Beaumont the day before) was prepared to accept that this was a "lesser role case within category 3".
23. The Defendant then pleaded guilty to both counts. The remainder of the 14-minute hearing on 27 August was, again, taken up with sentencing and administrative matters. The Appellant's Submissions
24. The Appellant says that following Beaumont's guilty plea, it was necessary to revise the Prosecution's opening note, the agreed statement of facts and the jury bundle. Further, on 26 August counsel for the Defendant produced a notice seeking disclosure (in addition to what had already been disclosed as unused material) of PNC and crime reports for co-defendant Daniel Harley and one Yannick Lamete, with any previous allegations of violence, whether they proceeded to court or not, to be disclosed.
25. I understand that the Prosecution, in response, disclosed a crime report from 2024 which recorded an attempted suicide by the Defendant and allegations by her against Harley of abuse, threats of violence and being forced by him into drug addiction and into dealing drugs on his behalf.
26. The Appellant says that this led to the agreement, with the Prosecution, of a basis of plea, and that this supports the conclusion that the court was dealing with substantial matters of case management, so that a trial had started in a meaningful sense.
27. The Appellant also relies upon an email obtained from a list support officer at St Albans which reads: " After checking the court logs and daily court lists we can confirm that the trial of BIGNELL & OTHERS was over 2 days... The 26 and 27 of August 2025." Conclusions

28. I am unable to accept that a trial of the Defendant started between 26 and 27 August 2025.
29. The Defendant's case (as opposed to that of her co-defendant Beaumont) was before the court for a few minutes on 26 August, at a point when it was understood that the trial of the Defendant would be effective but it was not known which judge would be able to preside. When her case came back before a different judge on 27 August, it went straight to a guilty plea.
30. It would appear that between 26 and 27 August, the Prosecution was persuaded to disclose evidence which supported the Claimant's claim to have been coerced into dealing drugs, and which assisted in the process of agreeing a basis of plea. The disclosure requested by the Defendant's counsel appears readily to have been agreed. Nothing was put to a judge for decision. There is no evidence that there was ever any dispute between Prosecution and Defence that might have required resolution, whether by negotiation or by a judicial ruling.
31. The Appellant must have been in position from the outset to take instructions from the Defendant upon her alleged coercion into drug dealing, and to take whatever steps were appropriate to obtain evidence in support. From what I have seen, had the Prosecution been asked to produce this information sooner, it would have been given.
32. I do not know why disclosure was not requested or given until the listed trial date, but it is not uncommon for issues that might have been raised earlier to be addressed at the door of the court. It does not follow that a trial has started.
33. All that aside, this sort of exchange of information, negotiation and agreement between prosecution and defence is characteristic of a cracked trial, not of a trial.
34. The parties' representatives managed to avoid a trial. Whilst that is of course a good thing for all concerned and saves money and court resources, it would be perverse to find that in consequence a trial did take place.
35. As for the changes to the prosecution opening note, the trial bundle and the statement of agreed facts consequent on Mr Beaumont's plea, those are normal trial preparation matters. They cannot support a finding that a trial of the Defendant had started.
36. I am not assisted by the email obtained by the Appellant from the listing office at St Albans. As the Appellant itself said in submissions to the Determining Officer (who, I note, appears to have read the court record as indicating that there had been no trial), the court record is not always a reliable source for determining exactly what happened. I do not myself have a copy of the court log but I have transcripts, which do, in contrast, furnish a reliable source of information.

37. I would, in accordance with Lord Chancellor v. Henery, have attached appropriate weight to any statement by either Ms Recorder Morey or Mr Recorder Stern to the effect that a trial had started. That they were not asked to do so is, to my mind, wholly unsurprising. From what I have seen, no one present in court on 26 or 27 August 2025 would have entertained the thought that a trial had started.
38. These appeals must, accordingly, be dismissed.

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