

ENGLAND AND WALES / JUDGMENT

R v Ghabbari

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IN THE HIGH COURT OF JUSTICE SENIOR COURTS COSTS OFFICE Neutral Citation No. [2026] EWHC 982 (SCCO) Case No: T20240156 SCCO Reference: SC-2025-CRI-000122 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 27 April 2026 Before: COSTS JUDGE LEONARD R v GHABBARI Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 Appellant: Zayd Ahmed (Counsel) The appeal has been successful (in part) for the reasons set out below. The appropriate additional payment to which should be added the £100 paid on appeal, should accordingly be made to the Applicant. COSTS JUDGE LEONARD

1. The Appellant represented Amor Ghabbari (“the Defendant”) in the Crown Court at Isleworth, under a Representation Order made on 21 March 2024. This appeal from the Legal Aid Agency (“LAA”)’s Determining Officer concerns the remuneration payable, under paragraph 17A of Schedule 1 of the Criminal Legal Aid (Remuneration) Regulations 2013 (“the Regulations”) for advocacy-related work undertaken by the Appellant.
2. Schedule 1 sets out the formulae by reference to which advocates are paid a “Graduated Fee” for representing a legally aided Defendant. Paragraphs 17 and 17 A of Schedule 1 provide for payment to be made in addition to the Graduated Fee, in certain circumstances.
3. Paragraph 17 allows an advocate to make a “special preparation” claim where the page count of served evidence relied upon by the Prosecution (“PPE”) exceeds the maximum figure by reference to which the Graduated Fee is calculated, or where the amount of preparation required exceeds the norm in certain specified circumstances.
4. Paragraph 17A, similarly, provides for an advocate to make a claim for an additional payment for consideration of “unused material”. Unused material is, for present purposes, material disclosed by the Prosecution to the Defence but not relied upon by the Prosecution as evidence, or served as such. It is, rather than being served, disclosed under a duty imposed by section 3 of the Criminal Procedure and Investigations Act 1996:
 - (1) The prosecutor must—
 - (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, or

- (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a)
- (2) For the purposes of this section prosecution material is material—
 - (a) which is in the prosecutor's possession, and came into his possession in connection with the case for the prosecution against the accused, or
 - (b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused.
- (3) Where material consists of information which has been recorded in any form the prosecutor discloses it for the purposes of this section—
 - (a) by securing that a copy is made of it and that the copy is given to the accused, or
 - (b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so; and a copy may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded."
- 5. Unused material is defined, for the purposes of the 2013 Regulations, at paragraph 1 of Schedule 1, as: "... material disclosed pursuant to the prosecutors' obligations in Part 1 of the Criminal Procedure and Investigations Act 1996..."
- 6. Paragraph 17A reads as follows: "(1) This paragraph applies in respect of any case on indictment in the Crown Court, in respect of which a graduated fee is payable under Part 2 or Part 3, other than a guilty plea.
 - (2) In any case to which this paragraph applies, a fee ("the basic consideration fee") is payable to a trial advocate in respect of the consideration of unused material which corresponds to the category of the advocate concerned specified in the table following this sub-paragraph, whether or not such consideration has actually occurred...
 - (3) This sub-paragraph applies where—
 - (a) a trial advocate has undertaken the consideration of unused material; and
 - (b) the advocate has spent in excess of three hours undertaking that consideration.
 - (4) In a case where sub-paragraph (3) applies—
 - (a) a fee ("the additional fee") is payable to the trial advocate in addition to the basic consideration fee; and
 - (b) the amount of the additional fee corresponds to the category of the advocate concerned specified in the table following paragraph 24.

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- (5) The additional fee is payable only where the appropriate officer considers it reasonable to make such a payment.
 - (6) A trial advocate claiming the additional fee must supply such information and documents as may be required by the appropriate officer in support of the claim.
 - (7) In determining whether it is reasonable to pay the additional fee, the appropriate officer must take into account—
 - (a) the reasonableness of the hours claimed in respect of the case taken as a whole; and
 - (b) the reasonableness of the hours claimed in respect of the consideration of the unused material.”
 - 7. For the purposes of this appeal, it is necessary also to mention section 21 of the Police and Criminal Evidence Act 1984: “21.— Access and copying.
 - (1) A constable who seizes anything in the exercise of a power conferred by any enactment, including an enactment contained in an Act passed after this Act, shall, if so requested by a person showing himself—
 - (a) to be the occupier of premises on which it was seized; or
 - (b) to have had custody or control of it immediately before the seizure, provide that person with a record of what he seized.
 - (2) The officer shall provide the record within a reasonable time from the making of the request for it.
 - (3) Subject to subsection (8) below, if a request for permission to be granted access to anything which—
 - (a) has been seized by a constable; and
 - (b) is retained by the police for the purpose of investigating an offence, is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a constable.
 - (4) Subject to subsection (8) below, if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—
 - (a) allow the person who made the request access to it under the supervision of a constable for the purpose of photographing or copying it; or
 - (b) photograph or copy it, or cause it to be photographed or copied.

- (5) A constable may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4) above.
- (6) Where anything is photographed or copied under subsection (4)(b) above, the photograph or copy shall be supplied to the person who made the request.
- (7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.
- (8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—
 - (a) that investigation;
 - (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
 - (c) any criminal proceedings which may be brought as a result of—
 - (i) the investigation of which he is in charge; or (ii) any such investigation as is mentioned in paragraph (b) above.
- (9) The references to a constable in subsections (1), (2), (3)(a) and (5) include a person authorised under section 16(2) to accompany a constable executing a warrant.”

Background

- 8. The Defendant was charged with conspiracy to assist unlawful immigration to a member state.
- 9. On 21st February 2023, 64 people were discovered in the rear of a Spanish registered HGV at the Port of Calais, having arrived from Dover. Investigators found that an Organised Crime Group was using a loophole in the UK visa regime to bring North Africans to the UK by using a fraudulently obtained tourist visa. Once the individuals were in the UK, they were then smuggled into France in HGVs.
- 10. The UK controller of the network was the Defendant, who having located migrants who wanted to travel from the UK to France, arranged for them to be smuggled to France by HGV. He took cash payments before assisting in loading them into the transport vehicles.
- 11. The Defendant pleaded not guilty. The trial commenced on 6 May 2025 and concluded on the 16 June 2025, when the Defendant was convicted.
- 12. In the course of the trial, the Prosecution applied to introduce as bad character evidence extracts from a download report (LM/01/20/05/2024) setting out the electronic material found on a mobile phone belonging to the Defendant (KF/01/20/03/2024). The material relied upon by the Prosecution comprised a series of WhatsApp communications. The point of the application was that this evidence showed that the Defendant had an established track

record of facilitating unlawful immigration. The application was successful and the WhatsApp communications were put before the jury.

13. It would appear, from a witness statement from the National Crime Agency, that the Prosecution produced as an exhibit a full set of WhatsApp records from KF/01/20/03/2024, comprising chats, images and voice notes.
14. The full download report LM/01/20/05/2024, along with other electronic material, appears to have been hand-delivered to the Defendant's solicitors on 4 March 2025 by a representative of the Crown Prosecution Service ("CPS"). It included three voice notes, specific disclosure of which was subsequently requested by the Defence on 13 May 2025, and to which the response was that they had already been delivered within the download report.
15. On 9 July 2025, the Appellant sent an email to, Mr William Goss of counsel: "... There hasn't been any confirmation that the phone download for Mr Ghabbari (exhibit KF01) has been provided as unused material... Are you able to confirm the position?"
16. Mr Goss replied on the same date: "Of course-the download was handed to your solicitor on 4 March 2025."
17. A Disclosure Management Document provided by the CPS also refers to the Defendant's mobile phone KF/01/20/03/2024, although download reports are mentioned only obliquely, with an indication that keyboard searches will be undertaken to identify anything relevant.
18. The download report, albeit bearing a different formal exhibit number, is consistently referred to in correspondence, submissions and the Determining Officer's Written Reasons as KF/01. I will just refer to it as "the download report". The Claim
19. The download report is in PDF format and comprises 71,711 pages. As is typical, it is divided clearly into discrete sections, for example images or messaging, and it contains large volumes of metadata or other information of no identifiable evidential significance. Within the report is a timeline section running from pages 30,917 to 45,979 inclusive (15,063 pages).
20. The Appellant submitted a claim for payment for 209 hours' work for reviewing the download report as unused material. The Determining Officer refused the claim on the basis that the download report was not listed on the Crown Court's Digital Case System ("DCS") and that the CPS had advised him by letter that the download report had been supplied under the provisions of the Police and Criminal Evidence Act 1984 rather than of the Criminal Procedure and Investigations Act 1996.
21. He concluded from that that the download report fell entirely outside the scope of paragraph 17A of schedule 1. As it was not unused material, there could be no claim for reviewing it as unused material.
22. In the event that it did qualify as unused material, the Determining Officer's conclusion was that no more than 24 hours should be allowed for reviewing it. That was partly because the 15,063 page timeline section duplicated information already elsewhere in the download

report, but primarily because the worklog supplied and supported the claim indicated that the Appellant had reviewed manually every single page of the report. The worklog appeared to categorise patently irrelevant material as relevant and probative, so that the worklog recorded for example the review of pages relating to supply of HGVs, whereas the relevant pages contained nothing but game metadata. He also noted that the images section contained thousands of patently irrelevant material such as emojis and flags.

23. The Determining Officer found that the contacts, call logs and messaging sections of the download report comprised 7,782 pages. Given that counsel appeared, from his worklog, to have covered 1,000 pages in three hours, he considered it appropriate to allow 24 hours for reviewing those relevant sections. Conclusions: Whether the Download Report was Unused Material
24. There are references in the correspondence to reliance by the prosecution upon some of the download report. That is plainly the case: the WhatsApp section of the download report was part of the served evidence. This is however an appeal from the Determining Officer on a claim under Paragraph 17A of Schedule 1, which concerns only unused material, and I am addressing only that appeal.
25. I must admit to being rather baffled at the Determining Officer's conclusion that those parts of the download report that do not qualify as served evidence, do not qualify as unused material either. It is typical, where (as here) the Prosecution relies upon extracts from a mobile telephone download report, for the entirety of the report to be provided to the Defence so that the Defence can put those extracts in context (for the principles see Lord Chancellor v Edward Hayes LLP & Anor [2017] EWHC 138 (QB) and Lord Chancellor v SVS Solicitors [2017] EWHC 1045 (QB)).
26. The extent to which the contents of such download reports should be included within the PPE count (by reference to which the Graduated Fee is calculated) has been the subject of many an appeal to a Costs Judge. That is because the inclusion of electronic evidence within the PPE count is a matter of discretion. The approach consistently taken by the LAA in such appeals is that the majority of the download report, being of insufficient evidential value, should instead be the subject of a special preparation claim.
27. That is to treat the entire download report as served evidence, and on that basis, the Appellant could have made a special preparation claim. Another viable approach is however to treat those parts of the report which do not merit inclusion within the PPE count as unused evidence: the provisions for payment are similar.
28. What I have never seen before is the proposition that those parts of the report that do not merit inclusion within the PPE count fall entirely outside the provisions of Schedule 1. That conclusion, to my mind, cannot be right.

29. Nor is it supported by the evidence. The Determining Officer appears to have mistaken Mr Goss, who on the evidence appears to have been prosecution counsel, for defence counsel, so disregarding confirmation from Mr Goss that the download report was supplied as unused material.
30. It also seems to me to be obvious, on the evidence put to the Determining Officer and now to me, that the download report, given the circumstances in which it was supplied, was not supplied under PACE. It was, as Mr Goss confirmed, disclosed as unused material by the Prosecution, pursuant to the Prosecution's statutory obligations. The information given to the Determining Officer by the CPS in that respect cannot have been right.
31. The Determining Officer has criticised the Appellant for not ensuring that the status of the download report was made clear. In fact he has. More to the point however, the Determining Officer has in this respect misapplied the LAA's published guidance on verifying the status of material supplied by the Prosecution to the Defence. That guidance is derived from *Lord Chancellor v SVS Solicitors*. It is aimed at clarifying whether material supplied by the prosecution should be treated as served evidence or unused material, not whether it should be disregarded altogether.
32. The same guidance makes it clear, by reference to *Lord Chancellor v Edward Hayes LLP & Anor*, that that an advocate or litigator should not be penalised for failure by the Prosecution adequately to record the basis upon which evidence is supplied to the Defence. I do not accept the Determining Officer's contention that "Only material that has been formally disclosed as unused material under the Criminal Procedure and Investigations Act 1996 (CPIA) qualifies for remuneration under the Unused Preparation scheme." *Lord Chancellor v SVS Solicitors* makes it clear that formal service of evidence is not a prerequisite to inclusion in the PPE count: nor, by logical extension, can "formal disclosure" be a prerequisite to a claim for the consideration of unused material.
33. My conclusion is, accordingly, that the Appellant has done everything necessary to establish a viable claim, in principle, for the consideration of unused material. Conclusions as to Quantum
34. The Appellant says that his review of the download report was not a mechanical or superficial exercise, but a comprehensive and forensic examination of a large and complex body of material that was central to the issues before the Court. The disclosure included extensive digital data, documentary records, and communications which required careful, page-by-page consideration to identify relevance, evidentiary value, and potential exculpatory material.
35. The data reviewed included a large volume of photographs and videos, each of which had to be individually reviewed, time-stamped, and placed into proper context. Many of those images and videos were ultimately put before the jury to demonstrate that the defendant was engaged in legitimate work activity at relevant times, directly undermining the allegation that he was participating in the alleged conspiracy. This process involved

correlating visual content with dates, times, and locations, and assessing consistency with other strands of evidence relied upon by the Crown.

36. In addition, the telephone contained numerous voice notes and written messages in Arabic (the Appellant is an Arabic speaker). These communications required translation before they could be meaningfully analysed. The need to obtain and review translations necessarily extended the time required well beyond that of a standard English-language document review. The messages were exchanged between co-defendants and were of high evidentiary significance, as they went directly to the nature of the relationships between the parties, the alleged coordination, and the defendant's actual involvement or lack thereof. Each translated message then had to be reviewed again in context, cross-referenced with other communications, and assessed against the prosecution's theory of conspiracy.
 37. Further, the review encompassed web searches, location data, and related digital artifacts extracted from the device. These materials were examined to establish the defendant's whereabouts and movements at relevant times. This required cross-referencing search history and location-related data with maps, timelines, and location evidence prepared and relied upon by the Crown. The analysis was necessarily meticulous, as even minor discrepancies or corroboration could materially affect the weight and reliability of the prosecution's case.
 38. The volume of material reviewed (71,711 pages) combined with the multilingual content, multimedia evidence, and the analytical demands of cross-referencing digital data with prosecution exhibits, made this review particularly time-intensive. The total time claimed equates to an average review rate of approximately 340 pages per hour. Given the complexity of the material, the need for translation, and the importance of accurate contextual analysis this rate is conservative and well within reasonable professional standards for competent legal review.
 39. The time expended was necessary to identify and present critical exculpatory evidence, to test and challenge the Crown's narrative, and to ensure that the Defendant received effective and diligent representation. Any significant reduction in review time would have risked overlooking material evidence and would have compromised the quality of the defence.
- Conclusions on the Amount to be Allowed

40. Having decided that this appeal should be allowed in principle, I asked the Appellant to supply a copy of the download report, so that I could compare it with the worklog submitted by him in support of his claim and reach my own conclusions as to the time to be allowed. I found the outcome of that comparison disconcerting. I have not been able to reconcile the worklog either with the Appellant's submissions on the nature of the work done, or with the download report itself.

41. The worklog records a page by page review of the entirety of the download report, at a constant rate of three hours per 1000 pages (the single exception being the last 711 pages recorded at exactly 2 hours). That includes material such as the 15,215 page “activity sensor data” section, recording (for the phone’s built-in health app) for example steps taken and energy burned, the entirety of which section can be dismissed at a glance as irrelevant.
42. There are occasional observations in the worklog on the nature of the evidence being considered which do not appear to match the contents of the report. The Determining Officer has already referred to the fact that the worklog records a three-hour review of pages 69,000-70,000 of the report, which are noted as containing “material relating to supply of HGV, this is a matter in issue and being relied on by crown in bad character”, whereas in fact those pages appear to contain nothing but Candy Crush gaming metadata.
43. Similarly, pages 31,000-32,000 of the download report (in the “timeline” section) are recorded in the worklog as recording conversations between the Defendant and a co-defendant, whereas the pages in question appear to contain only health-related “activity sensor data”; pages 5,000-6,000 (in the “activity sensor data” section), again described in the worklog as containing messages between the Defendant and a co- defendant, again appear to comprise only health-related data; pages 3,000-4,000 (in the “activity sensor data” section), described in the worklog as relating to family chats and conversations with friends, again appear to contain yet more health-related data; and pages 29,000-30,000 (in the “Locations” section), recorded in the worklog as containing material relating to false passports, appear to contain nothing but location data.
44. Nor does the worklog record any of the cross-referencing or analytical work now referred to by the Appellant. It simply records a page-by page manual slog, at a remarkably exact rate of three hours for every 1000 pages, through every page of every section of the download report, regardless of content or relevance, and without the use of any kind of electronic searching method.
45. Web browser data, characterised by the Appellant in his submissions as important, is described in the worklog as irrelevant. Similarly, notwithstanding the Appellant’s emphasis in his submissions of the importance of analysing the Defendant’s location history, the journey records at pages 28,641-28,643 and the location data at pages 28,644-30,230 of the download report are not mentioned in the worklog: on the contrary, pages 28,000-29,000 are described as containing nothing relevant to the case and pages 29-30,000, as I have mentioned, are described only as containing material relating to false passports (which as far as I can see, they do not).
46. The Prosecution relied on a number of communications from the download report in support of a bad character application to demonstrate that the Defendant had a history of facilitating unlawful immigration. That is a specific issue, in relation to which relevant evidence would necessarily have been limited. I would not have been able to accept that the extensive investigatory and analytical exercise described by the Appellant would have been

reasonable in that context, even if the worklog produced in support of his claim actually recorded such an exercise.

47. As far as I can see, the Appellant's worklog is entirely unhelpful. I can accept that the Appellant would have wished to undertake an analysis of the Defendant's chat data, emails and social media entries (of which only the last appears to contain any communications in Arabic), comprising 4,534 pages, 25 pages and 89 pages respectively. Of the 12,831 pages of images in the download report, most are described in the worklog as irrelevant. That, at least, I can agree with: most of them could be scrolled through at speed. The same applies to the 879-page video section.
48. Bearing in mind however the manifest deficiencies in the Appellant's worklog and its inconsistency with his account of the work undertaken by him, I have no reliable record of the work undertaken. In the circumstances I can do no better than to allow the 24 hours' work conceded by the Determining Officer (subject to the point of principle on which the Appellant has been successful). The appeal succeeds to that extent.
49. Given my concerns about the information that has been put before the court for the purposes of this appeal, I do not think it appropriate to make any award of the costs of the appeal, beyond the appeal fee itself.

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