

ENGLAND AND WALES / JUDGMENT

R v Makinson

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IN THE HIGH COURT OF JUSTICE SENIOR COURTS COSTS OFFICE Neutral Citation No.

[2026] EWHC 855 (SCCO) Case No: T20207323 SCCO Reference: SC-2025-CRI-000118 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 9 April 2026 Before: COSTS JUDGE LEONARD R v MAKINSON Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 Appellant: JOHN JONES KC (Counsel) The appeal has been successful for the reasons set out below. The appropriate additional payment, to which should be added the sum of £850 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant. COSTS JUDGE LEONARD

1. This appeal concerns a claim for payment under Schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013. The relevant Representation Order was made on 23 October 2020. The 2013 Regulations apply (and shall be referred to in this judgment) as in force on that date.
2. Defence advocates for legally aided defendants, such as the Appellant, are paid for their work by reference to the Graduated Fee provisions of Schedule 1. The Graduated Fee due is calculated, along with other factors, by reference to the number of served Pages of Prosecution Evidence (“PPE”). The PPE count is subject to a cap (which in this case is 30,000 pages) but it is open to advocates, in addition to the Graduated Fee calculated by reference to the PPE count, to claim an additional payment for “special preparation.”
3. The definition of “pages of prosecution evidence” (“PPE”) is to be found at paragraph 1, subparagraphs (2)-(5) of Schedule 1:
 - (2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub- paragraphs (3) to (5).
 - (3) The number of pages of prosecution evidence includes all—
 - (a) witness statements;
 - (b) documentary and pictorial exhibits;
 - (c) records of interviews with the assisted person; and
 - (d) records of interviews with other defendants, which form part of the served prosecution documents or which are included in any notice of additional evidence.

- (4) Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.
- (5) A documentary or pictorial exhibit which—
 - (a) has been served by the prosecution in electronic form; and
 - (b) has never existed in paper form, is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking into account the nature of the document and any other relevant circumstances.”
- 4. The special preparation provisions are to be found at paragraph 17 of Schedule 1. Insofar as pertinent for the purposes of this appeal, they read as follows: “17.— Fees for special preparation
 - (1) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable... (b) the number of pages of prosecution evidence, as defined and determined in accordance with paragraph 1(2) to (5), exceeds... (i) in cases falling within bands 6.1 to 6.5 (dishonesty offences, including proceeds of crime and money laundering), 30,000;... and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule.
 - (2) Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee...
 - (3) The amount of the special preparation fee must be calculated... where sub-paragraph (1)(b) applies, from the number of hours which the appropriate officer considers reasonable to read the excess pages... using the hourly fee rates set out in the table following paragraph 24...
 - (5) A trial advocate claiming a special preparation fee must supply such information and documents as may be required by the appropriate officer in support of the claim.
 - (6) In determining a claim under this paragraph, the appropriate officer must take into account all the relevant circumstances of the case, including, where special preparation work has been undertaken by more than one advocate, the benefit of such work to the trial advocate.”
- 5. The subject of this appeal is a claim for special preparation, claimed by the Appellant at 355 hours and allowed by the Legal Aid Agency’s Determining Officer at 120 hours. The Background
- 6. The Appellant represented Craig Makinson (“the Defendant”) in the Crown Court at Manchester. The Defendant was involved in the supply of huge quantities of drugs, dealing in kilogram blocks of cocaine at around 100kgs per month, at a profit alleged to be many millions of pounds. In addition he was active in the sourcing of a AK47 machine gun, pump action shotguns, Glock pistols, revolvers and significant quantities of ammunition.

7. The Defendant was at the highest echelons of the drug supply world both in his native Wigan and also in the areas in Liverpool and Manchester. He was regarded by the Prosecution as being as a “fixer” for major drugs gangs. His lifestyle replicated the amounts of money he was alleged to have laundered. He was in essence the UK head of an internationally based cartel.
8. The prosecution involved over 20 individuals who played parts in the drug conspiracy, from small street dealers to those at the very top of the conspiracy such as the Defendant. Acts of violence associated with the enforcement of drug deaths were set out in the indictment, including shootings, killings and attempted murder. Whilst the Defendant was said to have conspired to commit those acts he was not alleged himself to have been directly involved in committing them. The Prosecution case was that the Defendant’s seniority in the conspiracy was such that he did not engage directly in acts of violence and murder but was involved in ordering them and providing money to facilitate them.
9. The indictment against the Defendant included counts of conspiracy to possess firearms with intent to endanger life, conspiracy to possess ammunition with intent to endanger life, conspiracy to supply a controlled drug of class A, conspiracy to supply a controlled drug of class B and conspiracy to possess criminal property.
10. The investigation into the Defendant began with a surveillance operation which did not reveal anything significant. The most significant investigative step came with the “cracking” of the EncroChat encrypted phone system, a French based secure communications system which involved the use of various Android phones.
11. In May 2020 French authorities conducted an authorised hack into the EncroChat software and servers based in France, downloading a significant amount of material attributed to “handles” (pseudonyms) employed by EncroChat users. Analysis of the material revealed that such handles could be attributed to various organised crime groups (“OCGs”) such as that involving the Defendant. The handles for UK based criminals were transmitted to the National Crime Agency.
12. The UK EncroChat material was subjected to a process which revealed the various texts and messages sent between various handles. By cell siting and comparison with the cell siting of non-Encrochat phones, the handles could be attributed to individuals. In this case the handles “Top Shag” and “Dr Shagard” were attributed to the Defendant. “Ball Sniffer” was attributed to James Close and “Keyhole” to Callum Morris, the principal co-defendants in this case along with the alleged leader of the Defendant’s OCG, Jamie Rothwell.
13. That EncroChat evidence is admissible in UK criminal proceedings was confirmed by the Court of Appeal in R v A, B, D and C [2021] EWCA Crim 128. The only way in which the EncroChat evidence deployed against the Defendant by the Prosecution could be challenged by the Defence was on attribution grounds: that a given EncroChat phone attributed to the Defendant was in fact used by someone else at the material time.

14. It was the Defendant's case that the handles "Top Shag" and "Dr Shagard" were attributable to mobile phones to which he had access on a periodic basis only. The allegation was that these phones had been given to him to conduct various criminal enterprises but thereafter had been returned to their owner. The Defendant conceded that he was occasionally a user of the "Top Shag" and "Dr Shagard" handles but said that, at all material times referred to in the indictment, the phones had been used by others who were themselves involved in the wholesale supply of drugs and the importation of automatic weapons.
15. It followed that attribution of those phones was the most significant issue in the case. This had been fully pleaded in the Defence statement and accordingly the Prosecution deployed a great deal of evidence to indicate that the "Top Shag" and/or "Dr Shagard" handles could be properly attributed to the Defendant as evidence of involvement in major quantities of drugs. The Prosecution sought to do this in a variety of ways including by cell siting and tracing non EncroChat phones used by the Defendant, and by "co-location" putting the EncroChat phone into the Defendant's hands at relevant times. This became one of the major issues in the case.
16. The Prosecution expert accepted it was very difficult (but not impossible) to co-locate an EncroChat device with a non-EncroChat cell phone unless both were using the same mast at the same time. Even then, given the various difficulties in phones communicating with masts and the "passing on" of cell phones from one mast to another in the event that a mast could become oversubscribed, there were difficulties in establishing a common location. Context, he said, was everything. If one could establish the context of a particular text or call and that context could be supported by other material, that could go to show that the EncroChat evidence was attributable to a given defendant at a given time.
17. The Prosecution relied upon a co-location report generated by computer software which only identified those occasions when EncroChat and non EncroChat phones were in a similar location. The Defence Team undertook the contextual analysis of the relevant handles through a close evaluation of the underlying raw data as provided by the Prosecution. This extended to all aspects of the conspiracy, including the allegations of planned violent attacks.
18. This extended to an analysis of evidence from non Encrochat phones (of which the Defendant had six). Analysis revealed either a pattern of mutual contact and/or the absence of mutual contact with five key co-defendants, which either supported or tended to disprove the contention that he conspired with them. The Defendant's case was that he was a low-level drug dealer and that the various texts and/or correspondence with them would be consistent with low level supply as opposed to large scale and/or substantial supply. The Defence were able to establish by looking at this material that it indicated that he was indeed involved in small scale supply. The Appeal

19. It has been agreed, between the Determining Officer and The Appellant, that the served PPE exceeds the 30,000 “cap” by 26,445 pages and the criteria for a Special Preparation claim have been met.. The question then is the amount of special Preparation time to be allowed for reading those 26,445 pages.
20. The appeal turns, primarily, upon two points. The first is that the Determining Officer took the view that the Defendant could have reduced the time spent on the excess PPE by using the filtering and search facilities available (for example) with spreadsheet documents to assist in his analysis.
21. The second is that some of the time claimed was spent on cross-referencing, which in the Determining Officer’s view, by reference costs judge decisions including one of mine, R v Swaby (SCCO 228/18, 21 May 2019) must be excluded from the practice special preparation claim. That is because, by virtue of Schedule 1 paragraph 17(3), allowance can be made only for the time reasonable to read the excess pages. Cross-referencing is a separate, additional exercise.
22. As to the first point, the Appellant says that the Determining Officer has overlooked the fact that it was necessary not only to identify the EncroChat handles contacted by the Defendant, but then to find out who, at any given time, those handles represented. It was not just a question of looking for names or numbers but of attribution. In that context, search and filtering facilities were only of limited assistance.
23. As to the second, the Appellant says that the cross-referencing referred to in his claim was an inextricable part of reading the excess PPE, which could not properly be understood without it. It was not, for example, a matter of scheduling material that had already been read. It was a review of new material from multiple sources. Conclusions
24. I accept what the Appellant says about the limited value, in this particular case, of electronic filtering and search facilities.
25. As for cross-referencing, in R v Swaby I took the view that cross-referencing to other evidence fell outside the scope of paragraph 17(3) of Schedule 1, which allows time only for reading the excess PPE. In R v Khaliq [2022] EWHC 2663 (SCCO), Costs Judge Nagalingam accepted the logic of R v Swaby but on the facts of that particular case, found that cross-referencing was an inseparable part of the reading process and in consequence did fall within the scope of paragraph 17(3).
26. In this case I am not wholly persuaded by the Appellant’s submission that the cross-referencing referred to by him was an inextricable part of the reading of the 26,445 pages of excess PPE. Judging from the worklog submitted by him in support of the appeal, much of it involved cross-referencing to other evidence to ascertain its evidential significance, which seems to me to be a separate exercise from reading it.

27. That said, by my count only 29 of the hours recorded on the worklog involve an element of cross-checking, and are not exclusively devoted to it.
28. The Determining Officer found that the Appellant's worklog as originally submitted contained elements of work which did not fall within the description of Special Preparation, for example the preparation of submissions for the trial. Notwithstanding some further editorial work by the Appellant, I did find that some such elements still appeared, and that some time un unused material had been included. I also noted that most of the hours recorded in the worklog were recorded in complete hours, which suggests an element of estimation or approximation.
29. I was however able to extract from the worklog what I would regard as a reasonable and reliable figure of 300 hours on reading the excess PPE, excluding any element of cross-checking.
30. In R v Azam I used a cross-check. Whilst special preparation claims (based as they must be upon time reasonably spent) are not based on an allowance of time per page, calculating the minutes claimed per page can put such claims in perspective.
31. 300 hours is 18,000 minutes. For 26,445 pages of excess PPE, that comes to significantly less than one minute per page. That seems well within the bounds of a reasonable claim.
32. For those reasons, the appeal succeeds and I can allow a total of 300 hours' Special Preparation. That is an addition of 180 hours to the 120 already allowed by the Determining Officer.

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