

ENGLAND AND WALES / JUDGMENT

R v Winter

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

[2026] EWHC 1110 (SCCO Case No: 47EH1569723 SCCO Reference: SC-2025-CRI-000110 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 12 May 2026 Before: COSTS JUDGE BROWN IN THE MATTER OF: R v WINTER Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 SCCO Reference: SC-2025-CRI-00073 MICHAEL BIRNBAUM KC Appellant -and- THE LORD CHANCELLOR Respondent SCCO Reference: SC-2025-CRI-00074 ELLIS SAREEN -and- Appellant THE LORD CHANCELLOR Respondent SCCO Reference: SC-2025-CRI-00075 MICHAEL BIRNBAUM KC Appellant -and- THE LORD CHANCELLOR Respondent SCCO Reference: SC-2025-CRI-00076 ROSE SLOWE -and- THE LORD CHANCELLOR Respondent Appellant R v Campbell Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 The appeals have been successful for the reasons set out below. See below for my direction on the costs of the appeal. REASONS FOR DECISION: The issue arising concerns the allowance to advocates under paragraph 1 of Schedule 1. 3 to the Criminal Legal Aid (Remuneration) Regulations 2013 in respect of two appeals following a reference from the Criminal Cases Review Commission (“CCRC”). The first hearing in this appeal on 11 December 2025 was preceded by an admission 2. by the Respondent (effectively the LAA) that the basis upon which fees had been assessed was erroneous. The remaining matters to be determined were adjourned to a resumed hearing which took place on 22 April 2026 and the Appellants Mr Birnbaum KC and Mr Sareen appeared in person at that hearing. I also received a note from the Appellant, Ms Slowe. Mr Holborn, counsel, attended on behalf of the Respondent (effectively the LAA) - =(written submissions had been prepared by with Mr Orde, employed counsel.) The background to this appeal is set out in R v Martin Winter and Nathan Winter 3.

[2024] EWCA Crim 711 and R v Campbell [2024] EWCA. In the former the Appellants’ convictions for gross negligence manslaughter were not overturned on appeal; and in latter, the convictions for murder and conspiracy to rob were overturned on appeal. In Winter the Costs Officer allowed 50 hours against a claim for 167 for Mr Birnbaum 4. KC and 30 hours against a claim of just short of 41 hours for Mr Sareen, junior counsel . In Campbell the Officer allowed 300 hours for both leading and junior against a claim by Mr Birnbaum and for 430 hours and Ms Slowe, junior counsel for 643 hours. The Costs Officer rejected the claim for work done in respect on grounds of appeal 5. for which permission was not given by the court. He considered that where permission had not given there could be no

award of fees. The Respondent accepted that this was not the correct approach. At least in principle, fees could be paid in respect of grounds in respect of which permission to appeal had not been given by the Court of Appeal. The reason might be apparent from the decision of the Supreme Court in *Hayes and Palombo v Rex* [2025] UKSC 29; but it is not necessary for me to go into this in any further detail. I have reminded myself of the test in the 2013 Regulations; that in considering the 6. reasonableness of the fees I must consider all the relevant circumstances of the case, including the nature, importance, complexity or difficulty of the work and the time involved; and second, to allow a reasonable amount in respect of all work actually and reasonably done. It seems to me clear that the Officer was concerned not just with whether he should 7. not allow fees for work in respect of grounds which the Court of Appeal considered were unarguable and for which no permission was given, but also about the amount of time claimed. In respect of the claim by leading counsel in *Campbell* for instance, he commented that the hours seemed high given Mr. Birnbaum KC's previous involvement in the case. As to the fees of Ms Slowe, he was concerned about the fees claimed given the information that was already available about the case including the case summary (which he referred to as being prepared by previous junior counsel albeit it appears to be prepared by leading) counsel). It is not necessary for me to set out in great detail all the grounds in respect of which 8. permission was given or those for which it was refused. They are set out in the judgments to which I have referred. Important for the purpose of the argument are the findings by the Court of Appeal as to whether of some of the grounds were arguable; and concerns were expressed as to the length of the submissions on those grounds. The Respondents have, effectively, put the Appellants to proof that further sums are due notwithstanding the error of principle in the initial assessment. 9. In *Winter*, the Court "unhesitatingly" declined to give leave in respect of six grounds of appeal and considered ground 2, which averred that a Health and Safety Inspector was biased, as "hopeless", noting that the Appellant conceded the point during oral argument. The Court was further concerned by Ground 6, which contended that there had been insufficient evidence to convict the Appellant and that there was effectively no case to answer, a contention which the Court held was "clearly unarguable" [para. 29 -43]. In *Campbell*, the Court expressed concern about the "length and terms of many of the grounds of appeal". The Court cited the observation in *Ruhumatally v The State* [2024] UKPC 15 to the effect that an advocate must exercise professional judgment in advancing an appeal. It found that the majority of grounds were "wholly or substantially based on jury points which either were, or could have been, made to the jury at the trial". It was concerned that some of the grounds were an attempt to rerun the trial in a different way and some lacked an evidential basis (see [paras 118- to 122]. All relevant matters are apparent from the reported decision and were considered in 10. detail at the hearing. I have not however been persuaded to find, as Mr. Birnbaum rather urged me to, that all or many of the grounds found by the Court of Appeal to be unarguable were, to the contrary, arguable. It is not, I think, realistically open to me to decide that the Court of Appeal was wrong and that somehow I should take different view. Quite apart from anything else that might be said, the Court had the benefit

of more detailed submissions apart and was in substantially better position than I am to determine the merits. That however is not the end to the matter. There will inevitably be work done in 11. deciding what grounds to pursue, even if a decision is made not to pursue them. The point is that counsel could not rely upon the CCRC to have identified all the grounds on which an appeal could that were made. That may have some particular bearing in considering the causation ground in Winter (ground 4). Some work was reasonably done in respect of the judgment of Irwin J in the Civil Court (some 68 pages long, I was told) and the relevant direction to the jury, even if the argument as to causation was not one, in the event, that could realistically pursued. 12. Further, other work might reasonably have been required before it became apparent that there was no arguable point. An instance might be Ground 5 in Winter, non disclosure of an HSE circular. This was dismissed in substance following clarification of matters at the hearing. At least some work before this might have been reasonable. Thirdly, and perhaps most significantly, in determining whether an appeal should be 13. allowed and a conviction set aside, the court ultimately needs to consider not only whether the grounds of appeal are made out but also whether the safety of the conviction is thereby undermined. That requires consideration of the other evidence on which the conviction depended. Counsel must also be prepared to argue that such evidence was not sufficiently strong to convict.. Indeed, a close understanding of the case was needed to address the court as to whether or not, if the conviction were overturned, a retrial would have been appropriate. These were powerful points in the context of the appeal in Campbell, a case which had attracted a considerable amount of press interest and investigations leading to a very significant number of concerns about a number of elements of the case upon which Mr. Campbell was convicted. Even accepting here, as the Court of Appeal indicated, that matters which were raised in grounds of appeal had been put to the jury and, in the judgement of the Court could not be reargued as individual grounds of appeal., nevertheless, as Mr. Birnbaum demonstrated, close consideration of the points and the detail which lay behind them was reasonable when seen against the grounds for which permission was granted, as they potentially served to demonstrate that conviction was unsafe. It is clear that counsel are to be credited for their hard work in in achieving success 14. for Mr Campbell. Nevertheless, there seems to be some real basis for the concerns that the Costs Officer raised, and it is appropriate to reflect my own concern about the time likely to have been spent in pursuing grounds which the Court of Appeal ultimately considered unarguable. As the Costs Officer said, leading counsel was very versed in the facts and issues arising given his previous involvement. I take into account when considering the work that was reasonably done that counsel 15. were acting without solicitors. The detail of the case required careful consideration and it needed to be presented carefully. Campbell in particular was an old case. It appears in relation to the Campbell appeal there was, as I have already intimated, a very substantial amount of material to consider closely. 16. I have taken as a starting point the determination of the Costs Officer who no doubt has considerable experience in relation to appeals. I am satisfied that the error made by the Costs Officer means I need to adjust the allowances. That said I think that the adjustment must be

modest, given that I share the general concerns expressed by the Costs Officer as to the time claimed.. The times do seem high to me, particularly by reference for instance to the fact that 300 hours' work would represent about nine weeks' work, assuming 6/7/8 hours productive hours per day of continuous work on one case. I have no doubt that counsel made a very special effort for Mr. Campbell and no doubt often worked for longer, but this at least provides some measure against which the reasonableness of work can be gauged. I note the time set out in counsel's worklogs and I take into consideration the note 17. of Ms Slowe although some of the time set in that note seems particularly high (without going into too much detail in respect of her note I have concerns about the reasonableness of the times claimed by her, for instances, reading into the case and preparing written submissions (see [18 and [23]1), I also take into account all the Taxation Notes and everything that said as the complexity of the appeals and their procedural history. I take into account points made about disparity in the proportion of reductions in Winter albeit that points made about this seem to ignore the basis on which the reductions were made which were individual to the separate counsel. In Winter, I allow 36 hours for Mr Sareen and for Mr Birnbaum KC I allow 70 18. hours, 1 And note over 46 hours having been claimed for time spent on submissions responding to direction after two days of the appeal hearing. In Campbell, I allow 350 hours for Mr Birnbaum and 325 hours for Ms Slowe. It 19. seems to me that Ms Slowe is less likely to be affected by the error made by the Costs Officer because her work was at least primary focused on the ground which permission to appeal was given. In principle I will make an order in favour of the Appellants for the costs of the 20. appears but will leave the parties to calculate and to discuss the exact amount of costs awarded.

21. Mr Sareen was of very great assistance to me in the appeal hearing and his claimed fee for this appeal seems to me modest, at £450. I am minded to award costs to Ms Slowe of £350, she having prepared a detailed note. Both awards to include the court fee.
22. Mr Birnbaum KC pursued the appeal in a meticulous way. This quality no doubt earned the respect of other practitioners which is apparent from the documents to which I was referred. He made good a powerful points. I think this is his last case. He is, as I understand, to be substantially to be credited for work on the important point of principle in this appeal concerning costs recovery (which in the event was not necessary for me to decide). This involved a detailed analysis on the law. I was minded to allow him a figure of £3,500-£4000, again including the court fee. I understand he may no longer be in practice, and am currently unclear whether this has an impact on the amount that he can be paid.
23. With these indications I leave the amount to the parties ultimately to be resolved between themselves but, if they cannot, then they can revert to me. COSTS JUDGE BROWN

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Prepared on 24 October 2026 · Esheria