

Claiming Criminal Fees

Law Society
Legal Aid Annual Conference 2015

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Little time, much to cover!

- Maximizing Claims
 - PACE fees
 - Mags Fees
 - Enhancement
- ASBCPA 2014 Injunctions
- Claiming "Electronic" PPE

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Maximizing Costs

- **Health & Safety Warning**
- Current LAA approach
 - Retrospective assessment
 - Death of Cost Committees and real appeals
- The end of the "*legitimate cost dispute*"
- Don't start me on Contract Notices

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Police Station Standard Fees

- On that note, don't forget
 - Restrictions on advisers
 - Replicated in draft 2015 Contracts
 - DSCC ref number
 - Detail of who you spoke to
 - Esp the client on an INVB
 - Proof of means on any rolled-up FSA&A

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Police Station Standard Fees

- How many standard fees?
 - Contract Spec. 9.82
 - CBAM 5.9.6
- Starting point is One Fee unless
 - 2+ non-conflicted clients
 - Advice on separate matter outside *"same continuous period of detention"*
 - Genuinely branches into separate investigation (see over)

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Police Station Standard Fees

- CBAM example
 - *"2 matters advised on and advice continued on one after after the first occasion. 2 fees will be paid"*
 - Multiples of this also acceptable
- Watch for Ineffective bail backs (DS 4)
- And post charge matters

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Magistrates Standard Fees

- How many?
- Three legged test
 - Charged at the same time
 - Founded on the same facts
 - Series of offences or a System of Conduct

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Magistrates Standard Fees

- How many?
- Three legged test (Spec 10.68, CBAM 6.6)
 - Charged at the same time
 - Founded on the same facts
 - Series of offences or a System of Conduct
- The last is the key element
 - "Would they be tired at the same time?"

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Magistrates Standard Fees

- CBAM 6.6.6
 - Guidance of the beast
- Definition of "stand alone" breaches
- We say
 - They must literally be heard at the same time
 - **NOT** just concurrent with other proceedings

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Magistrates Standard Fees

- CRIMLA 41
 - Doesn't feature in new CBAM
- Can claim a Cat 2 on a cracked trial, withdrawal/discontinuance or bind over if
- Matter "listed" and "fully prepared for trial"
- JRS CRIMLA 41 Trial Prep sheet
- Remember Spec 10.92

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Magistrates Standard Fees

- Enhancement
 - On non-standard fees
- Broudie factors – exceptional
 - Skill
 - Speed
 - Circumstances
- Exception means
 - Out of the ordinary
 - In comparison to general proceedings

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ASBCPA

- Application, variation, discharge and appeal of
- Part 1 injunctions
 - Anti social behaviour injunctions
 - Anti-social behaviour orders
 - Drinking Banning Orders
 - Intervention orders
 - Individual Support Orders
- Under both Crime and Civil Contracts

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ASBCPA

- Civil Legal aid under
 - Associated Civil Class of work
- All levels of service
 - Legal Help
 - Representation
- Civil applications & rules
 - E.g. CW1 and Civ APP 1
 - Civil merits and means

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ASBCPA

- Civil Courts
 - County/High for injunctions/appeals
 - Youth Court for youths with appeals to the Crown
- Civil fees & rates
 - LH SF of £157
 - Non Family prescribed rates

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ASBCPA

- Breaches of Part 1 Injunctions are Criminal LA
- Heard in County or High Court
 - Non means tested
 - Means test waived for youths in Youth or Crown Court
- Crime Standard fees (undesignated areas)
 - Category 1B and 2

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Claiming PPE

- The costs saga of our time
- Recent, Post Napper, LAA advice
 - Self serving and incomplete
 - Now a little out of date
- Here is a brief summary
 - 2 rules
 - 3 cases

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Claiming PPE

- 2 Rules
- Pre April 2012
 - Funding Order, 1(2A) Schedule 2
- PPE includes material which
 - "has existed in paper form" &
 - Been "converted into digital form"

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Claiming PPE

- Post April 2012 amendment
 - Funding Order, 2C Schedule 2
- PPE includes material which
 - "served in electronic form" &
 - AO determines "appropriate to include it in PPE taking into account the nature of the document and any other relevant circumstances"

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● I.e. LAA discretion

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Claiming PPE

- Been many cases surrounding this and the related guidance
 - Would it have been printed pre April 12?
 - Other "relevant circumstances"
- Three most relevant are
 - Napper (SCCO 160/14)
 - Furniss (N'ham CC T20137653)
 - Thompson (SCCO 325/14)

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Claiming PPE

- **Napper** (SCCO 160/14)
 - First major LAA contested case
- Proper test is
 - "nature of documents and all the relevant circumstances"
- You need to demonstrate that the material was
 - "integral to the case against the Defendant"

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Claiming PPE

- **Furniss** (N'ham CC T20137653)
 - "Where 'cell site' telephone and similar material is served in digital form, such material must be included as PPE"
- And
 - "The fact that such material is served means that, ex hypothesi, it is relevant and required to be read by the defence"

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Claiming PPE

- **Thompson** (SCCO 325/14)
 - Deals with Furniss and post April 2012 test
 - Subject to LAA representations
- Findings include
 - Rejects LAA submission that it is
 - "no more than observations of a trial judge"
 - And as a Cost Judge
 - "I am bound to follow it"

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Claiming PPE

- So there you have it
- Furniss also says this on the 10,000 PPE/Special Prep threshold
 - Appropriate if a small percentage over threshold
 - 20-30%
 - "manifestly disproportionate" when PPE "vastly exceeds 10K pages"

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*And that is all we have
time for except....*

?

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Thanks for having me

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The End



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