

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IN THE MATTER OF AN APPEAL BY BRENDAN KELLY QC,  
ARTHUR HARVEY QC, LAWRENCE McCRUDDEN QC,  
TOM McCREANOR BL, RICHARD GREEN BL, LIAM McSTAY BL,  
NEIL MOORE BL and NEIL FOX BL  
FROM A DECISION OF DEPUTY TAXING MASTER WELLS

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GILLEN J

**Application**

[1] This is an appeal from a decision of Deputy Taxing Master Wells. It concerns the construction of the provisions of rules 16 and 17 of the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005 ("the 2005 Rules") as amended by the Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2009 ("the 2009 Amendment Rules"). The Deputy Taxing Master, in the course of his written judgment, has set out the factual background in great detail and this permits me to refer only to those salient matters relevant to this judgment. I record at the outset my gratitude to counsel who have submitted well-structured skeleton arguments and augmented them with skilful oral submissions before me.

**Background**

[2] This matter springs from a criminal trial which commenced on 22 November 2010 and which ended 55 days later on 1 March 2011. Various defendants were jointly charged with murder, attempted murder and affray out of events that occurred on 13 September 2008. Each of the accused in the case had been assigned counsel under Criminal Aid Certificates pursuant to Article 28 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The appellants in this case are Queen's Counsel and barristers who acted on behalf of the accused during the entirety of the trial. The matter in issue before me concerns the fees for preparatory

work carried out by counsel in this lengthy trial where no contemporaneous records of hours spent were recorded by them.

[3] In April 2010 solicitors on behalf of some of the defendants applied to the Legal Services Commission (“the Commission”) for the Very High Cost Case (“VHCC”) Certificate (see below for explanation of this certificate) pursuant to the 2005 Rules. The Commission refused the application. A further fresh application to review the VHCC refusal was made to the Commission on 20 October 2010. This was again refused. An appeal was then made to the Taxing Master against the refusal and this was refused on 16 November 2010.

[4] The trial commenced on 22 November 2010. On 21 January 2011 the Legal Services Commission sent to one of the solicitors on record in the case a letter (“the Commission’s letter”) in the following terms:

“Very High Cost Certificate

I acknowledge receipt of your application for a Very High Cost Case Certificate and confirm as the trial has now exceeded 25 days and having had regard to Rule 16, the Commission has now certified the case as a Very High Cost.

In compliance with the Supreme Court Taxing Office Practice Direction 2006 No 1, please retain this certificate and submit with your claim for fees to the Taxing Master’s Office on disposal of the case. Please also provide a copy to instructed counsel and request they retain this copy which should also accompany their claim for fees.

As the Commission has granted a Very High Cost Certificate in this case you are required under para 16B to record contemporaneously the number of hours spent in this case together with a short description of the nature of the work performed on each occasion and a note of the fee earner performing that work. These records are to be maintained in a permanently accessible (sic) format.

I advise, under Rule 16B of the 2009 Rules you are also required to provide periodic reports and projections as to the future cost of the case. These reports should include, in chronological order, time spent on each item of work

undertaken, the hourly rate and the grade of solicitor who carried out each item of work in accordance with Schedule 2 of the Rules. The report should also include a total of the hours expended. Confirmation of disbursement costs to date should also be included. ....

I advise, failure to comply with the Commission's request for periodic reports may result in revocation of this certificate ....

Yours faithfully

Karen Young  
Business Manager  
Criminal Defence Services"

[5] In the event the crucial issue in this case is whether or not the appellants were obliged to keep contemporaneous records of the type referred to in the certificate prior to receipt of that certificate.

### **The Legislative Background**

[6] Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ("the 1981 Order") provides for the grant of "free" legal aid in criminal proceedings. Article 36(3) provides that the Lord Chancellor (now to be read as the Department of Justice in accordance with Article 17 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) may make rules for carrying Part III into effect and in particular that such rules shall prescribe the rates or scales of payment of any fees, costs or other expenses which are payable under Part III.

[7] Article 37 of the 1981 Order (as amended by the Access to Justice (Northern Ireland) Order 2003 (Commencement No 3, Transitional Provisions and Savings) Order (Northern Ireland) 2005 provides that the Lord Chancellor in exercising any power to make rules as to the amounts payable under Part III of the 1981 Order to counsel or solicitor assigned to give legal aid in respect of proceedings before the Crown Court, and any person by whom any amount so payable is determined in a particular case before the Crown Court:

"shall have regard, among the matters which are relevant, to:

- (a) The time and skill which work of the description to which the rules relate requires;
- (b) The number and general level of competence of persons undertaking work of that description;
- (c) The cost to public funds of any provision made by the rules; and
- (d) The need to secure value for money,

but nothing in this Article shall require him to have regard to any fees payable to solicitors and counsel otherwise than under this Part.”

[8] This heralded something of a change from the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 which had advanced the principle “of allowing for remuneration according to the work reasonably undertaken and properly done”.

[9] The 2005 Rules were made in the wake of Article 37 of the 1981 Order and it was these rules which introduced a new regime by providing for the assessment of VHCC costs, the Taxing Master having regard to a basic trial fee or various guilty plea fees as defined in the 2005 Rules, plus the rates of payment set out therein at Schedule 2.

[10] The initial determination of standard fees (payable for most cases in the Crown Court) is undertaken by the Northern Ireland Legal Services Commission (“the Commission”). Where relevant to this case, the 2005 Rules provide as follows:

**“General**

4.-(1) Subject to rules 16 and 17, costs in respect of work done under a Criminal Aid Certificate to which these rules apply shall be determined by the Commission in accordance with these Rules and having regard to such directions and guidance as may be issued by the Lord Chancellor.

(2) In determining costs, the Commission shall, subject to and in accordance with these rules –

- (a) Take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and
- (b) Allow a reasonable amount in respect of all work reasonably undertaken and properly done. ....

### **Claims for fees by advocates**

10.-(1) Subject to rule 19, no claim by an advocate for fees for work done under a Criminal Aid Certificate shall be entertained unless he submits it within 3 months of the conclusion of the proceedings to which the Criminal Aid Certificate relates or within 3 months of his receipt of a certificate, whichever is the later.

(2) Subject to paragraph (3), a claim for fees shall be submitted to the Commission in such form and manner as it may direct.

(3) A claim shall -

- (a) Summarise where appropriate the items of work in respect of which fees are claimed according to the classes of fees specified in rule 11(3);
- (b) State the dates on which the items of work were done, the time taken where appropriate, the sums claimed and whether the work was done for more than one assisted person; and
- (c) Give particulars of any work done in relation to more than one indictment or a retrial.

(4) Where an advocate claims that rule 11(4) should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the Commission, the advocate shall specify them.

(6) The advocate shall supply such further particulars, information and documents as the Commission may require.

#### **Determination of advocates' fees**

11.-(1) The Commission shall consider the claim, any further particulars, information or documents submitted by the advocate under rule 10 and any other relevant information and shall allow such work as appears to it to have been reasonably undertaken and properly done.

....

(4) Where an advocate considers that, owing to the exceptional circumstances of the case (or part of the case which is the subject matter of the application), the amount payable by way of fees in accordance with paragraphs (2) and (3) would not provide reasonable remuneration for some or all of the work involved, he may apply to the Commission for a Certification of Exceptionality and the Commission may, in its discretion, grant such application.

....

#### **Very High Cost Cases - Certification**

16.-(1) Where the representatives of an assisted person consider that, owing to the circumstances of the case, if it proceeds to trial that trial will be likely to exceed 25 days, the solicitor (on behalf of himself and the advocate) may apply to the Commission for a Very High Cost Case Certificate and the Commission may, in its discretion, grant such application ...

....

## **Very High Cost Cases - Determination of representatives' fees**

17.-(1) Costs in respect work done in a Very High Cost Case shall be assessed and determined by the Taxing Master in accordance with this rule and having regard to such directions and guidance as may be issued by the Lord Chancellor.

(2) When assessing the costs payable under paragraph (1), the Taxing Master shall have regard, among the matters which are relevant to –

(a) The Basic Trial Fee, the Guilty Plea 1 Fee or the Guilty Plea No 2 Fee which would otherwise be payable if the case in question were not a Very High Cost Case, as appropriate to the representative (including the category of advocate instructed, as applicable) and the offence for which the assisted person was tried; and

(b) The rates of payments set out in Schedule 2.

(3) The provisions of rules 4, 7, 8(1) and (3), 9, 10, 11(1) and (3), 12, 13, 14 and 15 shall apply with the necessary modifications to the costs payable under this rule.

[11] Schedule 2 to the 2005 Rules provides for special hourly rates of payments in VHCC cases. The rates of payment in Schedule 2 are set out by way of hourly rates for preparation, hourly rates for non-preparatory work, and daily rates for advocacy and amounts for preliminary hearings.

### **The 2009 Amendment Rules in respect of VHCC**

[12] The 2009 Amendment Rules took this process a stage further. They made clear that the 2005 Rules continued to apply in respect of cases in which the Commission had granted a VHCC Certificate before the commencement date of 28 September 2009. It was common case in this instance that the 2009 Amendment Rules applied to the current cases before me.

[13] The amendments relevant to this case contained the following:

“6. In rule 2 -

- (a) for the definition of ‘a Very High Cost Case’, substitute ‘a Very High Cost Case’ is a case in respect of which a Very High Cost Case Certificate has been granted, either by the Commission under Rule 16A or the Taxing Master under Rule 16C, or which went to trial where the trial exceeded 25 days’.

7. For rule 16, substitute -

‘16.-(1) Where a representative of an assisted person considers -

- (a) that a case is likely to proceed to trial, and
- (b) that owing to the circumstances of the case, if it proceeds to trial, the trial will be likely to exceed 25 days, he may apply to the Commission for a Very High Cost Case Certificate.

....

(3) Subject to paragraph (4) and to rule 19, an application under paragraph (1) shall be made within 14 days after the assisted person has been committed for trial, and shall be submitted to the Commission in such form and manner as it may direct, and in accordance with such guidance as the Commission may from time to time issue.

....

16A.-(1) The Commission may grant an application for a Very High Cost Case Certificate only if it is satisfied that both of the grounds referred to in 16(1) are met.

(2) Subject to paragraph (1), the Commission shall grant a Very High Cost Case Certificate to each representative on whose behalf the application was made.

(3) If it is not satisfied that both of the grounds referred to in rule 16(1) are met, the Commission shall



refuse the application or, if it considers it appropriate to do so, it may defer its decision on the application.

(4) The Commission shall communicate its decision made under this rule, together with its reasons for refusing the application or deferring its decision, as applicable, in writing to the representative ...

16B.-(1) Where the Commission certifies a case as being a Very High Cost Case, it shall require the representative ...

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(a) to record contemporaneously the number of hours he spends in preparation work in the case, together with a short description of the nature of the work performed on each occasion and a note of the fee-earner performing that work as applicable;

(b) to maintain such records in a permanently accessible format; and

(c) to provide periodic reports and projections as to the future costs of the case to the Commission at such times and in such form as the Commission shall direct.

(2) The periodic reports provided to the Commission under (1)(c) shall, if so directed by the Commission, include copies of the records maintained by the representative under paragraph (1)(b).

(3) If a representative fails to comply with paragraph (1) without good reason, the Commission may revoke the Certificate granted to that representative, provided that the certificates shall not be revoked unless the representative has been permitted a reasonable opportunity to show cause orally or in writing why the Certificate should not be revoked.

(4) Where a Very High Cost Case Certificate granted to a representative has been revoked under paragraph (3), that representative's fees shall be determined under rule 8 or 11, as appropriate, as if the certificate had never been

granted unless the actual duration of the trial exceeded 25 days.

16C.-(1) A representative may appeal to the Taxing Master against a decision made by the Commission under rule 16A or 16B and, subject to rule 19, such an appeal shall be instituted within 21 days of receiving notification of the decision by giving notice in writing to the Taxing Master. ...

(8) For Rule 17, substitute -

**Very High Cost Cases - Determination of Representatives' Fees**

17.-(1) This rule applies to the determination of costs -

(a) where the costs are claimed by a representative to whom a Very High Cost Case Certificate has been granted under either rule 16A or 16C and that certificate has not been revoked under rule 16B; or

(b) In any other case which went to trial where the trial exceeded 25 days.

(2) Costs payable under this rule shall be assessed and determined by the Taxing Master in accordance with this rule and have regard to such directions and guidance as may be issued by the Lord Chancellor.

(3) When determining the costs payable to a representative under paragraph (2), the Taxing Master shall -

(a) assess the fees based only on the hours recorded in the contemporaneous records maintained by the representative; and

(b) allow fees at rates no higher than those set out for the appropriate category of work and the appropriate representative in Schedule 2.

(4) The Taxing Master may consult the trial judge or the Commission and may require the representative to provide any further information which he requires for the purpose of the determination under paragraph (3).

(5) The provisions of rules 4, 7, 8(1), 9, 10, 11(1) and 12 shall apply with the necessary modifications to the costs payable under this rule.”

[14] The references in 17(5) to the rules contained therein are references to the 2005 Rules and need to be briefly considered in order to form the context.

[15] Rule 4 of the 2005 Rules is of general application indicating that in determining costs the Commission shall take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and time involved and allow a reasonable amount in respect of all work reasonably undertaken and properly done (see paragraph 10 of this judgment). Rules 7, 8 and 9 refer to the determination of claims by solicitors for fees and disbursements. Rule 10 of the 2005 Rules refers to claims for fees by advocates (see paragraph 10 of this judgment). Paragraph 11 deals with the manner of determination of advocates’ fees and the method of determining fees where an advocate considers that, owing to the exceptional circumstances of the case, the amount payable in the normal manner would not provide reasonable remuneration. Rule 12 is not relevant to this application.

### **The Contentions of the Parties**

[16] Mr Harvey QC who appeared on behalf of all the appellants with the exception of himself and Ms Doherty who appeared on behalf of Mr Harvey highlighted the crucial importance of the reference to “the contemporaneous record in rule 17(3) of the 2009 Amendment rules. He contended:

- this could only be a reference to contemporaneous records as provided for and defined in rule 16B of the Amended Rules.
- that the Commission’s power to require the keeping of contemporaneous records pursuant to rule 16B arises only where it certifies a case as being a Very High Cost Case. This case was not a case certified as a VHCC but rather it became a VHCC because it ran for more than 25 days.
- alternatively, it was only so certified in the Commission’s letter of 21 January 2011.
- what must be taken into account by the Master pursuant to rule 17(3) are the contemporaneous records compiled by the representative as required by the

Commission following its certification of a VHCC i.e. in this case after 21 January 2011.

- The 2009 Amendment Rules do not outline requirements for contemporaneous record keeping prior to the grant of a VHCC or indeed prior to the expiration of 25 days. Accordingly there is a gap in the Rules. Rule 17(3)(a) cannot apply where rule 16B did not.
- the means by which the fees claimed for the period prior to certification can be assessed by the Master are to be found in rule 17(5) of the 2009 Amendment rules which provides that rule 4 (see paragraph 10 of this judgment ) applies to the costs payable under rule 17. Accordingly, the Master ought to have carried out an assessment of the claims on this basis.

[17] The contentions of Mr Swift QC, who appeared with Ms Moore on behalf of the Deputy Taxing Master, were as follows:

- the plain meaning of new rule 17 under the 2009 Amendment Rules is that fees should be assessed only on the basis of hours recorded in the contemporaneous records maintained by the representatives.
- once a VHCC certificate is granted a representative is entitled to be remunerated at the specialist rate applicable to VHCCs for all the work whether before or after the certification. Similarly, in the case of a trial which has lasted in excess of 25 days. There must be a predictable and certain approach to assessment of such fees.
- the right of the Commission under rule 16B to require the representative to maintain contemporaneous records, to provide periodic records and projections etc. once the case is certified as a VHCC does not affect the obligation on the Taxing Master to assess fees *only* on the hours recorded in the contemporaneous records maintained by the representatives and the delimitation of the Taxing Master's power under rule 17(3). These are wholly separate issues.
- the Rules do not support the contention that fees claimed in VHCCs in respect of work carried out prior to the grant of the VHCC or the expiration of 25 days should be assessed any differently from fees claimed in respect of work carried out thereafter.

### Conclusions

[18] This case essentially turns on the construction of rules 16 and 17 of the 2005 rules as amended by the 2009 rules. In construing those rules, I recognise that it is the duty of the court to accept the purpose decided on by Parliament. If the law is to have intellectual coherence, and provide certainty in litigation, I must ensure that I do not violate the legislative purpose of any statute. The position was summed up

by Lord Scarman in Duport Steels Ltd v Sirs (1980) 1WLR 142-168 in the following terms:

“... in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law (and) the judge’s duty is to interpret and to apply the law, not to change it to meet the judge’s idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgement best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires.”

[19] In this case it is clear to me that the object in amending the 2005 rules in 2009 was, at rule 17, to introduce a new arrangement for the review by the Taxing Master of his initial determination of the costs payable to a representative in a VHCC case. The underlying principle was to ensure, borrowing part of the terminology of Article 37 of the 1981 Act, that value for money was secured in addition to fairness and that there was to be public accountability in the course of a tight control over the dispensation of public finance. These articles were to be no mere dust jacket endorsements of the principle. They represent a clear indication that these concepts must take their place as key components amongst the elements making up the determination of fees. It cannot have been intended that the new start under the 2009 Amendment should be burdened with a legacy of past uncertainty in the assessment of fees. Hence the duty of the Master was couched in mandatory terms confining his remit in the determination of these special rate fees.

[20] With the advent of rule 10(3) of the 2005 rules, there had been a clear statutory need to keep detailed records containing dates when work was done and the time expended by representatives. Rule 17(3) was an advance on this process now introducing the refinement of the need for contemporaneous records as an indispensable criterion for assessment by the Taxing Master.

[21] Rule 17(1) unequivocally applies rule 17 to circumstances both where the VHCC certificate has been granted and in any other case which went to trial where the trial exceeded 25 days. Rule 17(2) determines that costs payable under this rule shall be assessed and determined by the Taxing Master in accordance with the rule. Rule 17(3), without any attempt to distinguish the certified case from the case where the trial exceeded 25 days, mandates that fees are to be determined by the criteria of contemporaneous records.

[22] In my view it is inconceivable that the Lord Chancellor would have included rule 17(1)(b) alongside 17(1)(a) if the former was to be excluded from 17(3) in terms of its operation until the 25 day period had passed. Not only would it make the inclusion of 17(1)(b) redundant and unnecessary, but it would be contrary to the whole thrust of the amendment. Rule 17(3) is wholly different from Rule 16B. The latter sets out the rights of the Commission when it certifies a case as being a VHCC. Thus the Commission in those circumstances can insist that the representatives provide periodic reports and projections as to the future costs of the case to the Commission including copies of the records maintained. If a representative fails to comply with such matters without good reason the certificate may be revoked. Article 17(3), dealing with the Taxing Master's duties, makes no reference to such periodic reports or projections etc. This is because it is directed not to the Commission but to the Taxing Master. His sole task is to assess the fees based only on the hours recorded in the contemporaneous records maintained by the representative and to allow fees that reach no higher than those set out for the appropriate category of work in Schedule 2. Rule 16B is different in purport from 17. There is no room for confusion between the two different roles.

[23] Representatives are entitled to be remunerated for all the work pertaining to the case whether it is before or after the grant of a certificate or before or after the 25 day period has elapsed at the special rate applicable to VHCC cases. However, it is only logical that the same requirement to assess the fees claimed on the basis only of hours recorded in the contemporaneous notes should apply as much to the period before the grant of the certificate or before the 25 day period has elapsed as to the subsequent period. A case is either a VHCC case or it is not. If the appellants' submission is correct, it would mean that different VHCC cases are assessed in different ways, individual VHCC cases are to be assessed in different ways depending on the stage reached eg. before and after certification or before and after the expiry of the 25 day period and the tight restraints on the Taxing Master should be applied only to some VHCC cases or to some parts of cases and not others. Such a conclusion would only make for administrative confusion and chaos and would be contrary to the purpose of the rules.

[24] I reject the submission that the reference to “the contemporaneous records” in rule 17(3)(a) can only mean the records referred to in rule 16B(1)(a). I must construe the legislation as a whole. The words take their colour from the context. It is the duty of the court to interpret the rule and not to rewrite it. It would be wholly incongruous and illogical to impose a stricter test to one type of VHCC rather than another in the wake of the clear purpose of the amendment. There is not the slightest hint of any apportionment process within the rule in circumstances where this could easily have been crafted had Parliament wished to do so. The absence of such an apportionment clause is significant. It is common case that the consequence of a case becoming a VHCC is that such status is applied retrospectively. Professional fees are claimed at VHCC rates from the outset. I can see no logical reason why rule 17(3)(a) does other than refer to the representatives’ recorded time spent on the case irrespective of whether that time was invested before or after a certificate of VHCC status was granted or before or after the 25 day rule was invoked. The purpose behind rule 17 was to produce a single and predictable method of assessment which was to be applied in all VHCC cases. Hence I find no gap in the rule as contended for by the appellants. As I have earlier indicated, rules 16B(1)(a) and 17(3) are entirely different aspects of this legislation. One deals with the rights of the Commission and the other deals with the assessment powers of the Taxing Master. That similar language was used in each does not disguise the separation.

[25] Nor do I attach weight to the argument that rule 4(2) should govern cases of this kind under rule 17(1)(b). The maxim *generalalia specialibus non derogant* applies in this instance. A general provision such as that contained in rule 4(2) cannot override a special rule such as that outlined in 17(3)(a) and (b). Rule 4(2) does not address the new method of assessing costs in a VHCC case and it is thus subject to the particulars of the new rule 17.

[26] Once I have accepted the purpose of the legislation as earlier outlined by me in this judgment, I must apply the purpose even if I considered the result unjust. However, I do not consider that the construction I have placed on these rules is unjust. The need for legal representatives to keep contemporaneous records is part of the changed culture of public accountability and value for money concepts which govern the dispensation of public funds. They are concepts that are not new and have been evolving for some years.

[27] Master Wells properly invoked the oft cited words of MacDermott LJ in Donnelly & Wall (a firm) v Lord Chancellor (1994) NIJB 171 at 175g-h and they are worth repeating:

“Two points should be made ... to my mind it is quite clear that:

(1) Solicitors (and counsel) must now (irrespective of what the previous practice may have been) keep an accurate and detailed record of all work done in relation to a case and this includes time spent on the various items of work. In short, they must be in a position to comply fully with the requirements of (the 1992 Rules).

(2) The appropriate authority can no longer assess fees “in the round”. It must comply with (the 1992 Rules) and detail the work that it has allowed.”

[28] Carswell LJ in Adair and others v Lord Chancellor (1996) NIJB 239 at 240g-j similarly adumbrated that counsel were bound to keep proper records in order to satisfy the demands now placed on them by the system of fee assessment adding “and if they failed to do so they cannot complain if their estimates are regarded somewhat critically”.

[29] Master Bailie issued a Practice Direction by way of guidance on costs in VHCC cases – No5 of 2009- dealing with claims for a payment by counsel and solicitors long before this trial. At paragraph 3(b) of that practice direction he stated the following:

“In relation to both solicitors and counsel, the only basis on which costs for preparation (ie work following within Schedule 2, table A) can be allowed is the contemporaneous records maintained in a permanently accessible format in accordance with Rule 16 and Rule 17. In respect of VHCCs records are of the essence and accordingly potential claimants are advised strongly to ensure that records complying with the rules are maintained from the outset in any Crown Court case which may potentially be certified as a VHCC in due course.”

[30] Master Wells pointed out in his judgment that these appellants should have been aware of the new regime for assessing VHCC fees which had come into force on 28 September 2000.

[31] Two unsuccessful attempts had been made by the legal representatives to obtain a VHCC Certificate. The potential of this case being a VHCC was therefore in the minds of counsel. The trial lasted 55 days and hence it must have been abundantly clear from a relatively early stage to experienced counsel that this case



was going to exceed 25 days and that the need for compliance with the 2009 Amendment to the 2005 Rules would be required. Therefore it came as no surprise for me to learn that two senior counsel engaged in this trial had in fact kept the appropriate contemporaneous records throughout and that they had been assessed accordingly by the Taxing Master.

[32] In all the circumstances therefore I affirm the decision of the Deputy Taxing Master.