Judicial Review – Criminal Legal Aid – validity of Costs Rules – whether proper consultation – whether Lord Chancellor had proper regard to principle of fair remuneration – Legal Aid, Advice and Assistance (Northern Ireland) Order 1981

[2004] NIQB 47 | *Ref:* **GIRC4196**

Judgment: approved by the Court for handing down | *Delivered:* **9/9/04**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY JOHN VINCENT McCANN, A SOLICITOR AND A MEMBER OF THE SOLICITORS' CRIMINAL BAR ASSOCIATION

AND

IN THE MATTER OF THE PAYMENT OF FEES FOR A SOLICITOR'S WORK IN CRIMINAL MATTERS UNDER THE LEGAL AID, ADVICE AND ASSISTANCE (NI) ORDER 1981

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GIRVAN J

[1] This is an application brought by John Vincent McCann, a solicitor, who is chairman of a group of criminal practitioners called the Solicitors' Criminal Bar Association. The applicant on behalf of himself and the other members of the association seeks to challenge the lawfulness of a number of statutory rules made by the Lord Chancellor over the period from 1998 to date, those rules being called in each year the Legal Aid Criminal Proceedings (Costs) Rules (Northern Ireland). The application was by consent amended to additionally challenge the most recent set of rules made in 2003. He seeks an order of mandamus directing the Lord Chancellor to properly consider the prescribed rates for work done by solicitors in criminal work fixed in the rules which he contends are unreasonably low and fail to provide fair remuneration to criminal solicitors. This judicial review accordingly represents a challenge to the Lord Chancellor's approach to the fixing of rates

of pay for criminal work undertaken by practitioners being paid under the Legal Aid system.

The Legislative Background

[2] The Legal Aid, Advice and Assistance (NI) Order 1981 ("the 1981 Order") contains the relevant primary legislative provisions dealing with the provision of legal aid. The main relevant provisions in the present content are contained in Part III of the 1981 Order. Magistrates' Courts, County Courts and Crown Courts are empowered by Article 28, 29 and 30 to grant Criminal Aid Certificates which generally entitle a defendant to legal representation from solicitors and, where appropriate, from counsel. Article 36(1) provides:

> "(1) In any case where a criminal aid certificate has been granted in respect of any person, the expenses properly incurred in pursuance of that certificate including the fees of a solicitor and, where counsel has been assigned, of counsel, shall be defrayed out of monies provided by Parliament, subject nevertheless to any rules made under this Article and to any directions as to the vouching of payments and the keeping of accounts, records or receipts which may be given by the Treasury".

Article 36(3) provides that:

> The Lord Chancellor after consultation with the Lord Chief Justice, the Attorney General and, where appropriate, the Crown Court Rules Committee, the County Court Rules Committee and the Magistrates' Court Rules Committee, and with the approval of the Treasury, may make rules generally for carrying this part into effect that such rules shall prescribe:
>
> > (d) the rates or scales of payment of any fees, costs or other expenses which are payable under this part".

Article 37 provides:

> "The Lord Chancellor in exercising any power to make rules as to the amounts payable under this part to counsel or his solicitor assigned to give legal aid and any person by whom any amount so payable is determined in a particular case, shall

> have regard to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done".

Thus Article 36(3) sets out statutory requirements of consultation and an issue arises in this case whether the statutory requirements of consultation were fulfilled.

[3] The Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 ("the 1992 Rules") set out the principal rules relating to the assessment of criminal legal aid costs. The 1992 Rules were made by the Lord Chancellor after consultation with the Lord Chief Justice, the Attorney General and the Rules Committees of the three courts and with the approval of the Treasury. The recital to the Rules recorded that regard had been had to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done. Under Rule 4 it is provided that costs in respect of work done under a Criminal Aid Certificate shall be determined by "the appropriate authority" in accordance with the Rules and in accordance with directions as issued by the Lord Chancellor. The appropriate authority is a committee of three persons selected from a panel appointed by the Lord Chancellor as constituted in accordance with paragraph 3. In determining costs the appropriate authority shall subject to and in accordance with the Rules take into account all the relevant circumstances of the case including the nature, importance, complexity and difficulty of the work and the time involved and shall allow remuneration according to the work reasonably undertaken and properly done. Rule 5 sets out how claims for payment should be submitted. Rule 6 contains provisions relating to the determination of fees and what work may be allowed for. Rule 5(2) provides that a claim for costs must be submitted to the appropriate authority and shall be accompanied by the Criminal Aid Certificate and any receipts or other documents in support of any disbursements claimed. Under Rule 5(3) the claim must summarise the items of work done and the various other matters set out in paragraphs (a) to (e). Under Rule 6(1) subject to Rule 6(5) the appropriate authority may allow work done by fee earners in the classes of work therein referred to (such as preparation, taking instructions, interviewing witnesses etc., advocacy, attendance at court, travelling and waiting and dealing with routine letters). Rule 6(2) provides:

> "The appropriate authority shall consider the claim, any further particulars, information or documentation submitted by the solicitor under Rule 5 and any other relevant information and shall allow –
>
> (a) such work as appears to it to have been reasonably undertaken and properly done

under the Criminal Aid Certificate including any representation or advice which is deemed to be work done under that certificate (by a fee earner, classifying such work accordingly to the classes specified in paragraph 1 as it considers appropriate and,

(b) such time in respect of each class of work allowed by it (other than dealing with routine letters written and routine telephone calls) as it considers reasonable; and, in any proceedings which are specified in paragraph 1(2) of schedule 1 part 2 the appropriate authority shall proceed in accordance with the provisions of paragraph 3 of that part of that schedule."

Rule 6(3) goes on to provide that subject to paragraph (2) and (4), the appropriate authority shall allow fees work allowed by it under this Rule in accordance with schedule 1 part 1; provided that, where any work allowed was done after 30th June 1993, it may allow such fees as appear to it to be fair in remuneration for such work having regard to the rates specified in that part of schedule 1.

Rule 6(4) provides that in the case of Crown Court proceedings, High Court bail applications and appeals to the County Court the fees allowed in accordance with part 1 of schedule 1 shall be those appropriate to the relevant grades of fee earners as the appropriate authority consider reasonable being the grade of senior solicitor, solicitor or fee earner of equivalent experience or an apprentice or pupil to a solicitor or fee earner of equivalent experience. There are detailed provisions establishing mechanisms for the certification of costs by the Taxing Master who may vary the amounts and certify the costs in any greater or lesser amount as he thinks fit having regard to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done subject to the right to request a review. Rule 12 makes provision for a power to make a re-determination of costs by the appropriate authority on application by a solicitor subject to a right of an aggrieved solicitor to apply to appeal to the Taxing Master further provisions made for appeals from the Taxing Master to the High Court.

[4] In Schedule 1 Part 1 the Rules set out hourly rates to apply in the High Court, Crown Court, Magistrates' Court and in appeals to the County Court. Thus, for example, £51.50 was provided as the hourly rate for a senior solicitor with £62.50 per hour for advocacy by a senior solicitor, £41.25 per hour in relation to attendance in court and allowances for routine letters and phone calls being fixed. Lower hourly rates are provided for solicitors who

are not senior solicitors and for apprentices. The rates may be reduced were it appears to the appropriate authority reasonable to reduce them having regarding to the competence and dispatch with which the work was done (see paragraph 2 of schedule 1 part 1). Paragraph 3 of schedule 1 provides:

> "In respect of any item of work, the appropriate authority may allow fees at more than the relevant basis rates specified in paragraph 1 where it appears to the appropriate authority that, taking into account all the relevant circumstances of the case, the amount of fees payable at such specified rate would not reasonably reflect –
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> (a) the exceptional competence and dispatch with which the work was done or,
>
> (b) the exceptional circumstances of the case.

Schedule 1 Part II sets out rates for so called "standard fees" as defined. A solicitor may submit a claim for determination under Rule 6 even in cases covered by the standard fees and if the fees determined by the appropriate authority more than the upper fee limit for the standard fee then the higher rate is payable. The challenge of the present case relates not to standard fees but to the hourly rates as fixed by the Rules.

[5] It is apparent from the wording of Rule 6(3) that it was originally intended that the prescribed rates would apply to work done between 1 January 1993 and 30 June 1993 with fees after 30 June 1993 being amended on the basis of fair remuneration having regard to the rates specified in part 1 of schedule 1 (though presumably without being bound by those rates).

[6] What happened subsequent to 30 June 1993 is that on an annual basis the Lord Chancellor has purported to extend the life of the 1992 Rules and to continue and on occasion amend the rates specified in Schedule 1 Part 1. The rates were not modified until 1996 when under the 1995 Rules a modest increase in rates was permitted. For example the senior solicitors' hourly rate in a Crown Court went up from £51.50 to £52.25. This increase was not in line with the Retail Price Index ("the RPI") which would, for example, have taken the senior solicitors' rate up to £55.94. The 1996 Rules extended the operation of the Rules to 30 June 1997. These again made provision for a modest increase. For example, the senior solicitors' hourly rates went up to £53.00 per hour. Allowing for inflation the rate should have been £57.20 in line with the retail price index. The 1996 rates have not been amended since then. Extroverting from 1993 and applying the RPI to March 2003 the senior hourly rate, for example, would be £67.19 whereas in fact the 1996 – 1997 rate has remained fixed at £53.00. The most recent extension rules; the Legal Aid in

Criminal Proceedings (Costs) Amendment No.2 Rules (Northern Ireland) 2003 extend the current rates to 1 July 2004. It is to be presumed that in line with the prevailing practice of the Lord Chancellor it is proposed to introduce further continuation rules for another six months. There is no suggestion that there will be an increase in the hourly rates.

The Applicant's Challenge to the Rules

[7] Central to the applicant's case is his proposition of the Lord Chancellor has simply failed to have proper regard to the principle of fair remuneration. The hourly rates have been kept at an artificially low level since 1992 and have not kept up with the increase in the value of money as reflected by the RPI. This failure to allow for inflation-proofing of solicitors' rates is, it is argued, unfair and unreasonable when, for example, compared to rates paid to other professionals in the legal aid context. For example, in the period from 1996 to 2001 a consultant's fees for examination and report increased 41% from £103.00 to £145.20 while solicitors' fees remained static. Legal aid financial limits have increased showing that the Lord Chancellor was acutely aware of the changing value of money. Mr Larkin QC contended that the rates are substantively unfair in that they require solicitors to work "at a loss" in the majority of cases. He sought to rely strongly on a decision of Campbell J (as he then was) in *Donaldson v Eastern Health and Social Services Board* [1997] NI 232 which established relevant taxation principles in the civil law context including the traditional A + B analysis, the adoption of a single A rate in Northern Ireland fixed at £57.50 per hour in 1994-1995, the use of a mean figure of 1100 hours worked per annum and with a normal 50% B mark-up in the "run of the mill" type of case with higher mark-up depending on complexity. Counsel argued that a clear picture emerges that the current rates are too low and that the Lord Chancellor cannot have reasonably and properly applied his mind to the question of fair remuneration when enacting the Rules.

[8] Across the entire spectrum of Magistrates' Court cases, which represent the vast majority of cases and where solicitors would normally not receive any up-lift, solicitors are being paid, it is argued, at an artificially low and unfair rate. Up-lift is only available in *exceptional* cases. Up-lift is allowed in many Crown Court cases but it is rare for the up-lift to be more than 100% up-lift which may be allowed in murder cases. In less serious Crown Court cases the up-lift will be at a lower rate. In England in the judgment in *Backhouse* the Taxing Master had used an A + B calculation under similarly worded rules arriving at his A figure not by reference to the fixed hourly rate set out in the Rules but by arriving at a broad average direct cost of the works and adding the B figure up-lift to take into account all the relevant circumstances of the case. The approach adopted in Northern Ireland in, for example, *Donnelly and Walls v The Lord Chancellor* [1994] NIJB 171 has been different and starts with the prescribed rate and up-lifts from

that point. In 1994 that worked to the advantage of a solicitor because the prescribed rate was somewhat higher than the going A rate in civil cases and thus the rate as fixed in the 1992 Rules included within it some element of up-lift but with inflation which decreases the real value of the prescribed hourly rate the current figure is less than the civil law A rate. The up-lift, accordingly is being applied to a lower base. Mr Larkin pointed out that the court's attention was not drawn to the approach adopted in the *Backhouse* case when the case of *Donnelly and Walls v The Lord Chancellor* was before McDermott LJ. Mr Larkin argued that the prescribed rates should be fixed at such a level that in the majority of cases they provide appropriate remuneration to solicitors without up-lift. When originally fixed the hourly rate did, in fact, as we have noted, exceed the accepted direct cost rate and allowed for an element of profit costs. In essence, Mr Larkin contended that, while in exceptional cases the up-lift provision allows fairer remuneration and a solicitor with a large Crown Court practice may make up his income out of the up-lifts in Crown Court cases, the income of practitioners dealing with the run of the mill type of work particularly in the Magistrates' Courts did not quality for uplift and the hourly rates now contain no element of profit costs.

The Procedural Technical Points

[9] Mr Larkin QC took a number of technical procedural points which he contended invalidated the Rules. Firstly, at a certain point in time the pre-amble to the Rules ceased to refer to the fair remuneration principle. Mr Larkin sought to argue that his submission was significant and showed that the Lord Chancellor had moved away from having regard to the principle of fair remuneration. Secondly, the Lord Chancellor failed to consult the Rules Committees of the Magistrates' Court, the County Court and the Crown Court which, he argued, he was bound to do. The Lord Chancellor had not directed his mind to the question whether there should be consultation with those Rules Committees. Thirdly, the most recent set of Rules were made not by the Lord Chancellor himself as required under the 1981 Order by rather by Lord Filkin, a Minister in the Department of Constitutional Affairs. Mr Larkin contended that the *Carltona* principle could not be called in aid by the Lord Chancellor to authorise a minister making the Rules because the enabling legislation required the personal involvement of the Lord Chancellor in the making of the Rules, the foundation to Mr Larkin's proposition being the unique and special constitutional position of the Lord Chancellor.

[10] Although the applicant's affidavit and Mr Larkin's skeleton argument dealt at some length with the pre-amble point the point can be shortly dismissed. There is no requirement in the Rules for the pre-amble to record a reference to the principle. The 1992 Rules did refer to the principle of fair remuneration and the for a number of years the extending Rules did also

refer to the principle. In 1998 and onwards the Rules did not. It appears that in 1997 counsel to the Speaker in Parliament advised that the principle of fair remuneration is not a pre-condition to the valid making of the instrument but rather a direction to the authority and power to make the instrument to exercise his power with this object or purpose in mind. The proper practice would not be to include the words. This was correct advice and the wording of the words from 1998 onwards in no way invalidated the Rules. The issue remains as to whether the Lord Chancellor did have regard to the principle and that issue arises in the overall context of this judicial review. It is illogical to assume that because the draftsman had stopped incorporating those words in the pre-amble that that indicated that the Lord Chancellor had forgotten about or omitted to have regard to the principle of fair remuneration. I am satisfied from the evidence that his attention was drawn to the statutory principle on every occasion when the Rules were being made.

[11] On the issue of the failure by the Lord Chancellor to consult with the various Rules Committees if there was a statutory requirement to do so a failure to consult would be a breach of a condition precedent to the proper making of the Rules. There is clearly duty to consult with the Lord Chief Justice and the Attorney General and there is a duty to obtain the approval of the Treasury. There is a duty to consult "where appropriate" with the relevant Rules Committees. A determination of the question "where" it is "appropriate" to consult must be reached by somebody. Mr Larkin QC argued that it was an objective question which must be determined by the Court if the court considered it appropriate than a failure to do would be fatal to the validity of the Rules. Mr Sales on behalf of the Lord Chancellor argued that it called for a judgment by the Lord Chancellor (applying *Carltona* principles) and that the Lord Chancellor was entitled to consider that consultation was not appropriate since the Rules Committees were intended to deal with procedural matters affecting the conducting of cases in those courts and the Rules Committees could not usefully contribute to the decision in respect of the fixing of Legal Aid costs. Mr Larkin's riposte was that there was nothing to indicate that the Lord Chancellor had indeed himself considered the question of consultation with the Rules Committees.

[12] The determination of the question "where" it is appropriate to consult the Rules Committee must in my view be a matter for the Lord Chancellor before the Rules were made it can be inferred from the evidence that a decision was made not to consult with the Rules Committees because it was not felt that they could meaningfully contribute to debate on the issues. This decision falls within ordinary *Carltona* principle in my view so that the Lord Chancellor was not required to personally make that determination. It is to be noted that this point emerged very late in the course of the arguments by the applicant and that at no stage did any of the Rules Committees, the Bar or Law Society raise any objection to the practice of making the rules without consultation with the committees.

[13] On the question whether the Lord Chancellor should himself have made the most recent Rules the Rules were made by a Minister within the Department. The *Carltona* principle applies to the making of subordinate legislation. As stated in *Wade and Forsythe on Administrative Law 8th Edition* at page 865:-

> "If Parliament confers power upon A the evident intention is that it shall be exercised by A and not by B but where power is conferred upon a minister, it is, as we have seen, taken for granted that his officials may exercise it in his name since that is the normal way in which Government business is done. This is as true of legislative as of administrative powers. Many ministerial regulations, though made in the minister's name, are validly signed by officials with or without the minister's official seal."

The well established Carltona principle is as stated by Lord Green in *Carltona Limited v Commissioners of Works [1943] 2 All ER 560:*

> "The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the Department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible and it is he who must answer before Parliament for anything that his officials have done under his authority."

While the Lord Chancellor has a unique set of functions under the constitution that in itself is no reason for concluding that the *Carltona* principle is inapplicable in the present context. The original 1981 Order conferred power on the Secretary of State to make such rules and the power was subsequently vested in the Lord Chancellor as head of the Lord Chancellor's Department (now known as the Department of Constitutional Affairs). I am satisfied that the Minister had the power to make the rules.

The Lord Chancellor's Case

[14] Mr Sales on behalf of the applicant, in addition to meeting the substantive case put forward by the applicant, contended that the court should reject the applicant's case on the grounds that:

(a) the claim was well outside the time limit for a judicial review challenge to the making of the Rules, the latest set being those in 2002 when the application was originally launched. Many transactions have gone through on the basis of the Rules from 1998 onwards and if the court were to intervene now to declare invalid the regulations which were never the subject of challenge in the past and to the present application severe administrative dislocation would result;

(b) the court should decline to grant the relief being sought (which is discretionary) having regard to the failure of the applicant to provide full and frank disclosure of information relevant to the claims being put forward and in particular the claim that the Lord Chancellor was wrong to conclude that there was some erosion in real value of work done for each hour of fees claimed between 1992 and 2003. Mr Andrews' affidavit highlighted the deficit in information adduced by Mr McCann. It is contended that the applicant has failed to provide concrete information and relies simply on a generalised abstract proposition.

[15] So far as the applicant's attack on the Rules from 1998 to 2002 are concerned the application comes very late in the day. Under Order 53 rule 4(1) an application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application should be made. Both Mr Larkin QC and Mr Sales agreed that even after leave is granted the court at the substantive hearing may conclude that the application should fail by reason of delay. The applicant and other criminal law practitioners from 1998 onwards were aware that the hourly rates had not increased yet they did not take any legal steps to challenge the Lord Chancellor's approach in respect of the making of the rules or generally. The application was not made until 2003 four years later. The vast majority of Legal Aid transactions in the relevant period are now closed. It would introduce undesirable and potentially unfair discrimination between practitioners for different basic rates to be applied in some cases and not in others. The due administration of the public finances must be based on sensible budgeting processes in advance of each year allowing for Parliamentary control to be exercised over the supply and expenditure of central funds. That process would be undermined by permitting out of time challenges to proceed with a view to demands for significant back payments in years where no challenge previously had been made. The applicant has adduced no material to establish a good reason to justify the bringing of proceedings so long after the enactment of the relevant legislation. Different considerations apply in relation to the belated and added claim to challenge the most recent rules made in December 2003. Those Rules were enacted at a time when the Lord Chancellor was aware of the intimation of a challenge to the decision not to vary the hourly rates and

was aware of the thinking behind the argument. In addition the challenge to the most recent set of Rules is a live one and it seems likely that the Lord Chancellor intends to bring in continuing rules to take effect in the very near future which themselves could be challenged if the present application failed purely on the delay point. It would be desirable for the court to rule on the legal issues raised in respect of the application in relation to the 2003 rules and in relation to those Rules the delay point is not in my view fatal to the challenge.

[16] Turning to the discretionary points advanced by Mr Sales against the application the absence of evidence of the matters which Mr Sales argued should have been addressed is not in itself fatal to the application but the way in which the applicant has seen fit to set up the case unparticularised in any material respect in relation to his own particular circumstances or the circumstances of individual members of the association means that he has not established that in his own case the approach by the Lord Chancellor has resulted in any overall unfairness of result. The applicant's case has to be based on a single focussed argument. The hourly rate has fallen well behind inflation and well behind civil rates. The argument, however, has the drawback of concentrating on one aspect only of the question of remuneration of criminal practitioners. Having regard to the paucity of information from the applicant the proposition that criminal solicitors are working at a loss or without profit in run of the mill cases is unsupported by any evidence and is mere argumentative assertion.

[17] The Lord Chancellor's argument against the applicant's case proceeds along the following lines:

(a) The Lord Chancellor was not acting irrationally or perversely in setting fees as he did. There was evidence that the average cost per case was increasing over time at substantially more than the rates of inflation. He was entitled to consider that the practical value of each claimed hour was being eroded over time. I accept that the Lord Chancellor was not acting illegally or irrationally in his approach.

(b) There is no clear objective standard of "fair remuneration". He was entitled to have regard to the fact that the rates of income for criminal legal practitioners was healthy and that there was no shortage of practitioners ready to do the work. The Lord Chancellor did have regard to the principle of fair remuneration. The concept of fair remuneration does not involve an appeal to a clear objective legal standard. An evaluative judgment is called for having regard to a range of factors including the state of the market for legal services, whether it is reasonable to expect practitioners to do the work for a particular fee and so on. I find no error of law in that approach.

(c) The Lord Chancellor was entitled to have regard to the fact that the overall outflow of funds to criminal legal aid year on year exceeded inflation. The legal profession overall has done well out of the system. Again there was nothing illegal in the Lord Chancellor's approach.

(d) The Lord Chancellor was entitled to make an assessment of time and value of the work represented by each hour claimed in relation to fees from the legal aid fund. Again it was open to the Lord Chancellor to approach his decisions in that way.

(e) The A + B approach adopted in civil cost taxation is not relevant or necessarily relevant in the context of criminal legal aid costs. It was open to the Lord Chancellor to approach the matter in that way.

[18] Setting the evidence adduced on behalf of the Lord Chancellor in support of the case that the Lord Chancellor did have regard to the principle of fair remuneration and arrived at a decision based on an assessment of the various factors discussed in Mr Andrew's affidavit against the unparticularised and very general propositions relied on by the applicant I conclude that the applicant has failed to demonstrate that the Lord Chancellor arrived at irrational or unlawful decisions. In *R v CD* (1976) NZLR 436 at 437 Somer J when considered the words "have regard to" said:

> "The first question is what is meant by the words `shall have regard to.' I do not think they are synonymous with `shall take into account' in any particular case or any of the appropriate matters may be rejected or given such weight as the case suggests is suitable."

I am satisfied the Lord Chancellor was aware of his obligation to have regard to the principle of fair remuneration when fixing rates or in deciding to leave rates unchanged. Mr Larkin relied strongly on the point that Mr Andrew's affidavit indicated that the Lord Chancellor had misconstrued the effect of the decision of McDermott LJ in *Donnelly & Wall v The Lord Chancellor* to suggest that "exceptionality" was a very wide concept and had therefore taken in account an irrelevant consideration. However, reading Mr Andrew's affidavit as a whole I am not persuaded that the Lord Chancellor was misled by a misinterpretation of that decision. A factor which weighed with the Lord Chancellor in the overall context of the case was that the criminal legal aid budget was significantly affected by the effective up-lift on costings in many Crown Court cases and that up-lift was a common feature in the fixing of many Crown Court cases involving legal aid fees. None of the factors to which Mr Andrew's refers in the affidavit which the Lord Chancellor took into account were outwith a range of factors he was entitled to take into account. He had a margin of appreciation and the matters that he considered

of weight leading to his decisions to enact the Rules could not be categorised as irrelevant considerations. I am satisfied that the decisions of the Lord Chancellor in enacting the various Rules could not be categorised as Wednesbury unreasonable, as procedurally flawed, as illegal or as having failed to take into account relevant considerations or left out of account relevant considerations.

[19] In the result the application for judicial review fails.