



Neutral Citation No. [2025] EWHC 419 (SCCO)

Case No: 13BD0234823

SCCO Reference: SC-2024-CRI-000089

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 26 February 2025

Before:

COSTS JUDGE ROWLEY

R
v
GOUDIE

**Judgment on Appeal under Regulation 29 of the
Criminal Legal Aid (Remuneration) Regulations 2013**

Appellant: Liberty Solicitors

The appeal has been dismissed for the reasons set out below.

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Liberty solicitors against the graduated fee assessed by the determining officer under the Litigators Graduated Fee Scheme in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013, as amended.
2. The solicitors were instructed on behalf of Paul Goudie who faced a four count indictment containing alleged offences of assault occasioning actual bodily harm, non-fatal strangulation, controlling and coercive behaviour and possession of Class C drugs. Goudie pleaded guilty to the last of these but proceeded to trial on the remainder.
3. When claiming the graduated fee, the solicitors categorised the controlling and coercive behaviour count as falling within Class J of the Table of Offences in Part 7 of Schedule 1 of the Regulations. The determining officer disagreed with that categorisation and calculated the graduated fee based on Class C. This appeal concerns that categorisation.
4. In order for the graduated fee to be calculated, the litigator has to choose one of the offences faced by their client. Usually that offence is contained within the Table of Offences or, for more recently enacted offences, guidance is provided by the Legal Aid Agency's Crown Court Fees Guidance which is regularly updated and which contains, at Annex S, a table of offences which have not been categorised in the Regulations with an indication of the categories expected to be claimed by the determining officers.
5. Where an offence falls within the Table of Offences, the fee has to be calculated using the class within which the offence falls. However, not all offences fall within those classes and, where that happens, they will, by default, fall into Class H unless it is reclassified by the determining officer. The litigator is entitled to seek a categorisation other than Class H and if that re-categorisation either does not happen or is not to the litigator's satisfaction, an appeal from the determining officer's decision lies to a costs judge.
6. It is not entirely clear to me whether or not the possession offence to which the defendant pleaded guilty falls within Class C but as possession with intent to supply such drugs falls within class C it does not seem to me that mere possession could be in any higher category. Class C is described as being "Lesser offences involving violence or damage and less serious drugs offences". The ABH offence which Goudie faced falls squarely within Class C and the non-fatal strangulation is expected to fall within this class by virtue of the updating guidance table.
7. The only one of the four offences which therefore does not fall within Class C, at the highest, is the controlling and coercive behaviour count. The solicitors have therefore chosen to use this count for the purposes of the calculation of their graduated fee and seek to argue that a higher class is appropriate. The guidance table indicates that "Controlling or coercive behaviour in an intimate or family relationship" will fall in classes B, C or J and the table also states that "the appropriate officer may consider the nature of the alleged behaviour towards the victim to distinguish between classes B, C or J."

8. Class B is described as containing “Offences involving serious violence or damage, and serious drug offences”. Class J concerns “Serious sexual offences”. A reclassification to either B or J would increase the graduated fee but the solicitors have firmly nailed their colours to the mast of a re-categorisation to class J on the basis that the conduct in count three justifies a description of being a serious sexual offence. There is therefore no need to consider whether the extent of the violence inflicted by the defendant upon his wife amounted to serious violence as opposed to a lesser offence involving violence as Classes B and C describe their categories.
9. Colin Wells of counsel appeared on behalf of the solicitors on this appeal. His submissions followed the grounds of appeal in quoting from the police report in respect of the evidence that would have been given by the victim and amplifying the graphic statements said to have been made by the defendant.
10. Some of the threats made by the defendant during the period covered by the indictment are undoubtedly sexual in nature. Others relied upon by the solicitors however seem to me to be simply threats of violence, for example “I could actually kill you even if I didn’t mean it. If that happened, I would lie beside you and die next to you.” In the same vein, Mr Wells’ submissions included descriptions of the sentencing guidelines on how the conduct in this case related to those guidelines. But most of the examples given concern either matters of violence or exacerbation by the length of time involved. The same comments apply to the grounds of appeal where the psychological and physical harm, extreme and prolonged coercive behaviour in reference to previous convictions and ongoing manipulation do not seem to me to weigh at all in the balance of demonstrating that these events were sexual in nature such as to found a reclassification to one involving serious sexual offences.
11. Moreover, the determining officer’s written reasons make reference to sentencing remarks which relate to the violence but which conclude by reference to (presumably defendant’s counsel) with the statement “I’m satisfied that whilst those are injuries, they are not so significant as to take this matter into a higher category under the Sentencing Council Guidelines.” It may well be that those comments are specifically aimed at the ABH account for which the defendant was convicted as opposed to the strangulation count where the defendant was acquitted. Nevertheless, those comments do suggest that the judge did not consider the culpability and particularly the harm in this case to be at the top level as was contended for by Mr Wells.
12. It is, I think, uncontroversial to say that sexual threats are regularly made as part of coercive or controlling behaviour in an intimate relationship such as between husband and wife. Such threats are more concerned with the balance of power within the relationship rather than being sexual offences in the manner allowed for by the Table of Offences.
13. Consequently, whilst I do not think there is sufficient in the events relied on in this case to suggest that they are serious sexual offences analogous to those set out in class J in any event, I do not consider that they can simply be looked at as sexual offences without the context of the intimate relationship.
14. For these reasons I consider that the determining officer’s classification of the controlling and coercive behaviour count as class C is correct and as such this appeal fails.