



Neutral Citation No. [2023] EWHC 2117 (SCCO)

Case No: T20187090

SCCO Reference: SC-2022-CRI-000078  
SC-2022-CRI-000132

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

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

Date: 16 August 2023

**Before:**

**COSTS JUDGE LEONARD**

**R**

**v**

**McGINLEY**

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

Appellants:

**William Evans (Counsel)**  
**Rebecca Penfold (Counsel)**

This Appeal has been dismissed for the reasons set out below.

COSTS JUDGE LEONARD

1. This appeal concerns the classification of offences for the purposes of calculating the graduated fee due to defence counsel under Schedule 1 to the Criminal Legal Aid (Remuneration) Regulations 2013. The class of offence is one of the key criteria, or “proxies”, for calculating the graduated fee.
2. The appeal originally also incorporated a claim relating to the payment of a trial fee, but that has not been pursued.
3. The Representation Orders in this case were made in November 2017, and the 2013 Regulations apply as in force at that time.
4. The particular significance of that fact in this case is that major changes were made to the classification provisions of Schedule 1 for all Representation Orders made after 1 April 2018. Prior to the implementation of that change, offences were classified by reference to a “Table of Offences” at Part 7 of Schedule 1, which for ease of reference I shall refer to as the “pre-April 2018 Table”. Subsequently, offences have been (and continue to be) classified by reference to a separate published document to which I shall refer as the “AGFS Banding Document”.

### **The Background**

5. The Appellants represented William and Martin McGinley (“the Defendants”) in the Crown Court at Stafford.
6. The Defendants faced trial alongside three other defendants on an 8-count indictment. Counts 1 and 5 were of conspiracy to hold another person in servitude. Counts 2 and 6 were of conspiracy to require another person to perform forced or compulsory labour. Counts 3 and 4 were of conspiracy to traffic another person for the purpose of exploitation. Count 7 was of conspiracy to arrange or facilitate the travel of another person with a view to exploitation and Count 8 was assault causing actual bodily harm.
7. The case against the Defendants and their co-defendants, a group of travellers, was that they had forced BW, a vulnerable adult, to perform compulsory labour and had trafficked him within and outside the UK. They took him from his home; put him into sub-standard, unsanitary accommodation; drove him around against his will; obtained a passport for him and kept it, so controlling his movements; forced him to work (which included theft and other criminal conduct as well as cleaning their caravans and the sites where they lived) for effectively slave wages; and assaulted him with a baseball bat in order to keep him under control. Any money BW was paid by third parties was taken by the Defendants and their co-defendants.

## **The Classification of the Offences**

8. The pre-April 2018 Table groups offences under class headings. Under each heading is a list of specific offences and, where appropriate, the relevant statutory provisions. Class A lists homicide and related grave offences; Class B offences involving serious violence or damage, and serious drug offences; Class C lesser offences involving violence or damage and less serious drugs offences; Class D sexual offences and offences against children; Class E burglary; classes F, G and K offences of dishonesty; Class H miscellaneous offences; Class I offences against public justice; and Class J serious sexual offences. Conspiracy offences are categorised in the same way as in the relevant substantive offences.
9. Under paragraph 3 of Schedule 1 to the 2013 Regulations (as in effect for Representation Orders made before 1 April 2018) offences not specifically listed under one of the classification headings in the pre-April 2018 Table are deemed to fall within Class H. An advocate who is dissatisfied with a Class H classification may apply for the offence to be reclassified. The LAA's Determining Officer will then consider the application and, if appropriate, reclassify it under what appears to be the most suitable class in the pre-April 2018 Table.
10. This is one such case. The Appellants argue that the trafficking and forced labour offences with which the Defendants were charged should be categorised as Class J. The Determining Officer has categorised the offences as Class B.
11. The Determining Officer noted that Class J does include offences of trafficking for sexual exploitation (contrary to sections 57 to 59A of the Sexual Offences Act 2003) but also that sexual exploitation was not a feature of this case. By reference to the judgment of Costs Judge Simons in *R v Parveen Khan* (SCCO 179/11, 31 January 2012), the Determining Officer concluded that a Class J classification could not be right for the offences with which the Defendants were charged.
12. The Appellants' case is that the offences with which the Defendants were charged were modern slavery offences. They were not categorised under the 2013 Regulations as applicable to Representation Orders made before 1 April 2018, because the legislation that established them, the Modern Slavery Act 2015, did not exist at the time that they were put into effect. The AGFS Banding Document now bands trafficking offences under the Sexual Offences Act 2003 with as servitude, forced and compulsory labour and trafficking for exploitation under the 2015 Act (Band 14). The offences with which the Defendants were charged should, therefore, be classified as Class J offences.

## **Conclusion**

13. The Appellants, in effect, are asking me to apply the AGFS Banding Document retrospectively, imposing its reclassification of offences upon the pre-April 2018 Table. Mr Evans, for both Appellants, has put that case as persuasively as one could expect, his key argument as I understand it being that one should recognise the gravity of a modern slavery offence, as now reflected in the AGFS Banding Document, and apply the discretion conferred by the 2013 Regulations to classify it accordingly within the pre-April 2018 Table.

14. Ms Quarshie however makes in response what seems to me to be an irrefutable point. It is that the AGFS Banding Document cannot apply to a case which pre-dates its inception and which is governed by an earlier iteration of the 2013 regulations. That is not only because the AGFS Banding Document does not apply retrospectively. It is also because the reclassification of offences within the new “bands” came into effect as part of a broader revision of the proxies by reference to which graduated fees are calculated. For that reason, the Table of Offences is not directly comparable with the AGFS Banding Document.
15. I agree with Ms Quarshie. One must apply the 2013 Regulations as in effect for Representation Orders made before April 2018, without blurring them with later iterations.
16. This takes me back to the judgment of Costs Judge Simons in *R v Parveen Khan*. Judge Simons was considering an offence of conspiracy to traffic persons into the United Kingdom contrary to Section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Rejecting the proposition that it should be classified as a Class J offence, he stated unequivocally that a case can only be classified as a Class J offence if it is a serious sexual offence. That was the decision which the Determining Officer followed in this case.
17. I respectfully agree with Judge Simons. The offences with which the Defendants were charged do not belong within Class J because they are not sexual offences. Ms Quarshie, for the Lord Chancellor, points out that Class B offences include kidnapping, false imprisonment and “hostage taking”, all of which have some similarity to the offences with which the Defendants were charged, and that the course of conduct overall upon which the charges were based included an element of serious violence. One can see the logic of classifying the offences, within the Table of Offences as applicable for Representation Order is made before 1 April 2018, as Class B.
18. For those reasons, this appeal is dismissed.