

ENGLAND AND WALES / JUDGMENT

R v Daniels

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IN THE HIGH COURT OF JUSTICE SENIOR COURTS COSTS OFFICE Neutral Citation No. [2026] EWHC 248 (SCCO) Case No: 04ZL1356722(M) SCCO Reference: SC-2025-CRI-000089 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 9 February 2026 Before: COSTS JUDGE LEONARD R v DANIELS Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 Appellant: Shafi Solicitors This Appeal has been dismissed for the reasons set out below. COSTS JUDGE LEONARD 1. This appeal concerns whether, under the Graduated Fee provisions of Schedule 2 to The Criminal Legal Aid (Remuneration) Regulations 2013, the Appellant is due a “cracked trial” fee or a full trial fee. 2. Schedule 2, at paragraph 1, provides the following definitions: “cracked trial” means a case on indictment in which... the assisted person enters a plea of not guilty to one or more counts at the first hearing at which he or she enters a plea and... the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons)... and... in respect of one or more counts to which the assisted person pleaded guilty, the assisted person did not so plead at the first hearing at which he or she entered a plea... “Newton Hearing” means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of R v Newton (1982) 77 Cr App R 13...” 3. A Newton Hearing is, as that definition indicates, a fact-finding hearing for sentencing purposes. Such a hearing is treated as a trial under the Regulations. If a Newton hearing took place in this case, the Appellant is due a full trial fee. If not, only a cracked trial fee (as the Legal Aid Agency’s Determining Officer found) is due. The Principles 4. 5. 6. 7. In R v Robert John Newton (1983) 77 Cr. App. R. 13, the Court of Appeal identified the three forms of what is now known as a “Newton Hearing”. The disputed facts may be put before the jury for a decision; the judge may hear evidence and then come to a conclusion; or the judge may hear no live evidence but instead listen to submissions from counsel and then come to a conclusion. For the purposes of this appeal it was accepted by both parties as an established principle that (given the express reference in the definition at Schedule 2 paragraph 1 to R v Newton) live evidence need not be heard for a hearing to qualify as a Newton hearing for the purposes of the 2013 Regulations. The essential point remains that there must be a fact-finding exercise for the judge to conduct. So, for example, in R v Shehu [2023] EWHC 3483 (SCCO) I distinguished between cases where the Judge had been called upon to make a finding of fact, therefore equating to a Newton hearing, and those where undisputed facts might lead to one or other of different interpretations and inferences, in turn leading to a different conclusion on sentencing. The latter would not equate to a Newton hearing. I have been referred to a number of other Costs Judge decisions on whether or not a Newton hearing had taken place, all of which are necessarily fact-sensitive and none of which are binding. I need not refer here to all of them.

Background

8. 9. 10. 11. 12. 13. 14. The Appellant represented Samuel Daniels (“the Defendant”) before the Crown Court at Preston. The Defendant, alongside five co-defendants, faced trial on an indictment containing 27 counts, including six counts of fraud against the Defendant. The Prosecution case was that, over a period of time the co-defendants targeted multiple vulnerable persons, making cold calls under the guise of bank representatives calling to warn them of an imminent fraud risk. The persons targeted were then induced to transfer money to avoid the non-existent fraud, so falling victim to the real fraud perpetrated by the defendants. On 15 April 2024 the Defendant entered not guilty pleas but on 11 July 2024, at a pre-trial review, the prosecution added a count of conspiracy to defraud, to which the Defendant pleaded guilty. The Defendant served a basis of plea dated 13 September 2024, in which he limited his involvement in the conspiracy to periods outside the scope of a suspended sentence received by him in May 2022, and named four victims in respect of whom the Defendant admitted involvement. The Defendant’s basis of plea asserted throughout that he had acted on instructions and been unaware of the scale of conspiracy, nor did he have any control over others in the conspiracy. On 27 September 2024 the Prosecution served a response to three of the co-defendants’ bases of plea. The Prosecution did not accept the Defendant’s basis of plea, submitting that his participation in facilitating the conspiracy overall was more significant for the purposes of sentencing than his basis of plea accepted. On 6 and 7 March 2025 the parties attended court for a 2 day sentencing hearing at the which the Defendant was sentenced to 5 years’ 2 months’ imprisonment. The question to be determined on this appeal is whether the hearing of 6 and 7 March 2025 was a Newton hearing or merely a sentencing hearing. I understand that the hearing of 6 and 7 March 2025 was listed as a sentencing hearing, but I do not understand it to be in dispute that if the relevant criteria are met, a hearing will be a Newton hearing whether or not it has been listed as such. The Appellant’s Submissions 15. 16. 17. The Appellant submits that the judge presiding over the hearing on 6 and 7 March 2025, HHJ Lloyd, made three distinct findings of fact. The first was that the Defendant did not commit any offences during a 12-month period from 20 May 2022, when he was subject to a suspended sentence of 23 months’ imprisonment. The Prosecution had opened the case on the basis that the Defendant had been involved in offending during that 12-month period. This was disputed by the Defendant. HHJ Lloyd’s finding to the contrary made a material difference to the sentence imposed, in that the Defendant did not have to face an additional period of imprisonment of some 23 months. 18. HHJ Lloyd further accepted defence submissions that the Defendant was only involved in offences against four victims. This was important, as the prosecution did not accept this in their sentence opening note or submissions at the sentence hearing. Again, it is submitted that this also made a material difference to the sentence imposed.

19. Whilst concluding that the Defendant was part of the overall conspiracy, the judge concluded that his was not a leading role but a significant role. Again, this made a material difference to the sentence imposed. Conclusions 20. 21. 22. The Appellant has supplied transcripts of the proceedings 6 and 7 March 2025 which do not seem to me to support the Appellant's case. It is correct that the position initially taken by the Prosecution was that, during the 12- month period from 20 May 2022, the Defendant had rented premises (room 15 at Apex House in Blackburn) which were subsequently used in furthering the fraud and conspiracy, and that he had done so for the purposes of that conspiracy. That was the basis upon which it was alleged that he had offended during the period of his suspended sentence. It appears however to have been conceded by the Prosecution, for the purposes of the hearing on 6 and 7 March 2025, that Apex House was not initially used for the purposes of the conspiracy and that in any event it was not for the court to deal with any breach of a suspended sentence. Mr James Rae, for the Prosecution, said: "... it is also clearly significant that whilst Daniels clearly accepts having rented the office premises at room 15 Apex House during the currency of his suspended sentence, in his basis of plea, he... maintains it was for a legitimate purpose. We have put a separate note up addressing that following researches overnight, your Honour, and it appears to be the case it was not initially used for the purposes of this conspiracy, and it is also right that he was dealt with for these breach of suspended sentence separately..." 23. Subsequently the following exchange took place between HHJ Lloyd and Mr Stewart, counsel for the Defendant: "Mr STEWART... in my submission, albeit the Crown has initially said that this placed him in breach of a suspended sentence, in fact, in my submission, he is not in breach of that suspended sentence. That was imposed in May 2022... JUDGE LLOYD: Yes, well, I think if the Prosecution cannot prove when the... The Prosecution seem to suggest now that they cannot prove that Apex House was leased... for criminal purposes, and so I do not think you need to bother me about that..." 24. 25. It would appear that HHJ Lloyd was not called upon to make any finding about any breach by the Defendant of his suspended sentence. The Prosecution accepted that there was no evidence to support such a finding. Nor can I identify any competing factual submissions or any necessity for a finding of fact with regard to the number of victims with whom the Defendant was directly involved. The Prosecution's focus was rather upon his role in and awareness of the overall conspiracy, s reflected in the Prosecution's sentencing opening: "To summarise, it is the prosecution case that the prime mover and constant instigator was Giovanni Piras. Alongside him we place Samuel Daniels, an active participant in his previous offending, who... admits to having had telephone contact with victims and to renting the premises at Apex House. That is clearly the top tier and we say that, since its focus was to prey upon the elderly, he too must have been aware of that fact ..." 26. The defence response was: "Whilst it is conceded that the overall conspiracy had features that could place the Defendant in a Leading Role –sophistication, sustained period of time. The Defendant was involved with 4 victims, he didn't involve others through pressure or influence and his actions were upon instruction. It is submitted that his role was Significant rather than Leading... The overall Conspiracy is Category 1 (over £500,000) but it is submitted that the Court ought to take into account the Defendant involvement concerned 4

victims. The actual loss concerning those 4 amounts to over £100,000 and intended loss would amount to a further £175,000, in total around £300,000- this would place the Defendant in Category 2.” 27. In submissions Mr Stewart pointed to the number of offences committed by co- defendants in which the Defendant appeared to have played no role, and offered this summary: “My submission again as regards culpability is he was involved, as is set out on those four occasions... It was over a period of time, but my submission is this: his role was under instruction, and when one balances the features, albeit the conspiracies have undoubtedly got features of leading... culpability for all of them -- the level of sophistication I have already mentioned, those particular features -- as regards the defendant's own role, in my submission, there are feature that could put him in category 2, and it may be one of those cases that straddles those particular borderlines as for starting point.” 28. This appears to have been the approach taken by HHJ Lloyd in sentencing. Her sentencing remarks included these: “In your basis of plea, you accept involvement between 2020 and mid- 2021, so when on bail for previous offences, and in October 2023 to January 2024... You say you acted on instructions throughout, but you did telephone some victims to facilitate the frauds when you were given their details. You did not attend any home addresses. You deny involvement in the purchase of goods or currency. As I have already dealt with, the premises at Apex House were initially to be used for a legitimate purpose but accepts that they were subsequently used for the purposes of the conspiracy. I comment that you have provided no evidence of any legitimate business having been conducted from those premises. As a person with your antecedent history, I wonder how you would be able to start any legitimate business, but I take into account that there is no evidence of any fraud having been committed after... May 2022 and before... September 2023, nor can the Prosecution prove that Apex House was obtained specifically to further the conspiracy, but the schedule of events makes it quite clear that you were an active participant in the overall conspiracy from a very early stage... Looking at the Sentencing Guidelines, there is no evidence that you had a or the leading role. However, there are numerous elements of high culpability, which I have already dealt with: the sophisticated nature and planning, of which you were aware; the fraudulent activity over a sustained period, even if there was a break in your offending; the large number of victims in the overall conspiracy, even if you were not personally involved with them all. You knew the extent of the fraud, and you knew that victims were being deliberately targeted on the basis of vulnerability. In relation to harm, as your counsel rightly says, the overall conspiracy places this in category 1 harm, but it points out that the loss, and intended loss, of the victims with whom you were directly involved was around £300,000, which would place this in category 2 harm. As I have said from the outset, even if a defendant was personally involved with a limited number of victims, you knew precisely what was happening over those two separate periods on your own account. There was at least, at the very least, the risk of category 1 harm with high impact. Even if you were not personally involved with defrauding at all times -- and I note there is a gap, or so, in the summer of...of eight weeks, or so, in the summer of 2021 -- in 2023, you allowed the use of Apex House to enable others to be defrauded. Furthermore, the high impact to your victims overall must be factored in. So, this is high culpability category 2 harm...” 29. Nowhere in the

transcripts have I found any indication that HHJ Lloyd was called upon to make a finding on any disputed facts upon which the degree of the Defendant's culpability might turn. On one issue where that might have been required, which was whether the Defendant has acquired the premises at Apex house for fraudulent purposes, the Prosecution accepted that there was no evidence to that effect and HHJ Lloyd made it clear to the Defendant's counsel that she did not need to hear from him on that point. 30. 31. I did consider (although this is not the basis upon which the Appellant's case has been put) whether the Defendant's awareness of the overall conspiracy, beyond his direct involvement with four victims, might have constituted a disputed fact upon which a finding was required, but the it does not appear to have been in issue by the time of the sentencing hearing. It would seem to have been obvious from the undisputed history of the Defendant's involvement, as set out in a schedule of events. Rather than being the subject of competing submissions, HHJ Lloyd's conclusion in that respect was very much in line with what Mr Stewart, the Defendant's counsel, had said. In short, the hearing on 6 and 8 March 2025 was a sentencing hearing, in which HHJ Lloyd drew conclusions about the Defendant's culpability and the appropriate sentence to impose without being called upon to resolve any disputed factual issue. It was not a Newton hearing. 32. For those reasons this appeal fails, and must be dismissed.

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