

ENGLAND AND WALES / JUDGMENT

R v Palmer

COURT
IN THE HIGH COURT OF JUSTICE

BEFORE
COSTS JUDGE Brown

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No.

[2025] EWHC 1634 (SCCO)

IN THE HIGH COURT OF JUSTICE

SENIOR COURTS COSTS OFFICE

Case No: T20237055

SCCO Reference: SC-2024-CRI-000144

Thomas More Building

Royal Courts of Justice

London, WC2A 2LL

Date: 27

th June 2025

Before: COSTS JUDGE Brown

IN THE MATTER OF:

R v Palmer

Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013/Regulation 10 of the Costs in Criminal Cases (General) Regulations
Appellant

THOMAS GRFFITHS

-and-

THE LORD CHANCELLOR

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

Respondent

REASONS FOR DECISION 1. The issue arising in this appeal is whether the Determining Officer was correct to assess the fee payable to the Appellant on the basis that a Newton Hearing had not taken place so that the fee payable to the Appellant under Paragraph 20 of Schedule 2 of the Criminal Legal Aid (Remuneration) Regulations 2013 (the Remuneration Regulations) was on the basis of a 'guilty plea' rather than a 'trial fee'. The Appellant is an advocate under the scheme. 2. At the hearing on 17 April 2025, Mr. Binks solicitor appeared on behalf of the Appellant. The Legal Aid Agency ('LAA') were unrepresented but had served written

submissions.

3. The Defendant was charged with ABH and criminal damage. A dispute arose as to the basis of plea when the Defendant pleaded guilty on 28 August 2023. The incident forming the basis of the charges took place at a garage and was recorded on CCTV. It appears the Defendant had approached the victim from behind and inflicted serious burning with a lit aerosol canister. As I understand it the Defendant claimed that he thought that the canister contained soapy water and was not flammable and he had approached the victim to spray him from behind as a practical joke; he said he had not acted in malice. This basis of plea was not accepted. A Newton hearing was fixed for 17 September 2024. The transcript of that hearing 4. records that the Judge said at the outset that the hearing was to decide whether or not the basis of the plea that the Defendant had offered was right. The judge then said that he had watched the video of the event before the hearing. He commented that he would not allow the prosecution counsel to cross examine over a videolink. I understand that although defence counsel was in attendance prosecution counsel was attending by videolink. The judge then went on to ask, effectively, what then should happen at the hearing. In the event Defence counsel invited the judge to give what might be referred to as a 5. quasi Goodyear indication. The judge gave some consideration as to the appropriateness of such a course and having satisfied himself, with the benefit of counsel's assistance, that he could proceed in this way and then recused himself, indicating that the Defendant would have a Newton hearing on another day. He then gave an indication of sentence following which the Defendant withdrew the (disputed) basis of plea and a guilty plea was entered. 6. The Appellant submits that a Newton hearing actually took place.
7. Schedule 1, Part 1, Paragraph 2(8) of the Remuneration Regulations provides that:-
 - (8) Where following a case on indictment a Newton hearing takes place—
 - (a) for the purposes of this Schedule the case is to be treated as having gone to trial; .. 8. A “Newton hearing” is defined as a hearing at which evidence is heard for the purposes of determining the sentence of a convicted person in accordance with the principles of R v Newton 77 Cr. App. R. 13 CA. As is well known a Newton hearing involves the sentencing court making findings, usually following the giving of evidence, in order to determine the correct level of sentence; the purpose of the hearing is to enable the sentencing judge to determine such facts as are necessary in order to sentence the defendant. As is also clear from the decision in R v Newton, such a hearing can take three forms. The first is where disputed facts may be put before the jury for a decision; that is obviously not relevant here as a jury was never empanelled. The second and third methods described by the Court in R v Newton are as follows: “The second method which could be adopted by the judge in these circumstances is himself to hear the evidence on one side and another, and come to his own conclusion, acting so to speak as his own jury on the issue it which is the root of the problem. The third possibility in these circumstances is for him to hear no evidence but to listen to the submissions of counsel and then come to a conclusion. But if he does that, then... where there is a substantial conflict between the two sides, he must come down on

the side of the defendant.” 9. In *R v Elymilahi* 70/15 and 134/15, Costs Judge Rowley noted that on occasions there was a fine line to be drawn between a Newton hearing and a standard sentencing hearing but that it could not be said that a Newton hearing had taken place where “the Judge has simply sentenced [the defendant] on the basis of his own plea, having satisfied himself about the inconsistencies which initially troubled him”. 10. In this case, in contrast to the facts of many of the decisions of Costs Judges to which I have been referred, there clearly was a substantial conflict between the two sides. It is however clear under the scheme that it is not enough that the case is listed as a Newton heading or that substantial work was done in preparing for such a hearing. A Newton hearing may take place if not listed as such (*R v Makengele* SCCO Ref: SC-2019-CRI-000072) but the hearing must take place. 11. The judge in this case did not make any conclusion on the factual dispute between the parties. The Determining Officer held that this was determinative. The LAA say that the Officer was right to reach such a decision and that the hearing was in the event merely a sentencing hearing so that the Appellant should be compensated on the basis of a ‘guilty plea’ only. Consistent with such a case, it is said, the Judge indicated that the Defendant could have a Newton hearing on another day before a different judge if he wished. 12. I have previously taken the view that a Newton hearing can take place even if it does not proceed to a determination of a factual issue by the judge (see *R v Asseum* SCCO ref 194/18 referred to in *Riley Hayes v Lord Chancellor* [2023] EWHC 2195). A trial is understood to have taken place even though it may not proceed to a verdict by a jury. In deciding whether a case proceeds to trial under the 2013 Regulations a Determining Officer is required to consider whether the trial has commenced in a meaningful sense (see *Lord Chancellor v Ian Henery Solicitors Limited* [2011] EWHC 3246 (QB) [96] at sub para.

- (6) Spencer J). Mr. Binks argued that this was the test to apply here and that a Newton hearing will have taken place if it has started in a meaningful sense. The difficulty, it seems to me, is that even accepting that this is the correct approach 13. (and a literal reading of the provisions might suggest that it is not- they require a hearing at which evidence is heard) it was clear from the outset of the hearing that there was going to be no Newton hearing. 14. I do not accept that this is a matter of my discretion as Mr. Binks argued. There may be a fine line in determining whether a hearing has started in a meaningful sense but still there is a line. The learned judge was unwilling to permit cross examination and that meant it was 15. unlikely that oral evidence would be given. And that meant the judge would not proceed to determining the basis of plea. I accept that that is not inevitably so (there could, as Mr. Binks pointed out, theoretically have been submissions leading to a determination in accordance with the third limb of *R v Newton*) but on the facts of this case it seems to me clear that the Newton hearing could not take place because prosecution counsel could not cross examine. There had moreover been no opening of the case. Indeed it was not enough that the judge had looked at the CCTV evidence- that was not an event that took place in the hearing. It seems to me that for a Newton hearing to take place, there be some meaningful engagement with the issues arising as to the basis of the plea (a matter which would seem to follow from the fact that a Newton Hearing might be understood as taking place even if not listed as

such). However the hearing in this case had not in my view started in any meaningful sense and I do not think it can be said that the hearing had taken place. As all present appeared to have recognised if a Newton hearing was required following the judge's indication it would take place on another day. Costs Judge Brown COSTS JUDGE BROWN

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