



Neutral Citation No. [2024] EWHC 2546 (SCCO)

Case No: T20237176

SCCO Reference: SC-2024-CRI-000008  
SC-2024-CRI-000034

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

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

Date: 7 October 2024

**Before:**

**COSTS JUDGE ROWLEY**

**Rex**

**v**

**TA**

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

Appellants: Richard Wright KC  
Ben Campbell (Counsel)

The appeals have been dismissed for the reasons set out below.

**COSTS JUDGE ROWLEY**

**Costs Judge Rowley:**

1. These are the appeals of leading counsel (Richard Wright KC) and junior counsel (Ben Campbell) against the decision of the determining officer to use band 1.2 in the Banding of Offences table to calculate the fees payable under the Advocates Graduated Fee Scheme as set out in the Criminal Legal Aid (Remuneration) Regulations 2013, as amended.
2. Counsel were instructed on behalf of TA who was indicted for the murder of his foster carer on 5 April 2023. TA was 12 at the time and had recently been placed into foster care. On the day in question, he went to the car owned by his foster carer and her husband in order to remove some football nets from the boot of the car. He said that he then decided to drive to see his mother albeit that he had never driven a car before. The foster carer and her husband rushed out to the car to try to prevent TA from driving off. He reversed over the foster carer killing her almost instantly. He pleaded guilty to death by reckless driving and that plea was accepted by the prosecution.
3. The classification of offences in the 2013 Regulations originally applied to both litigators and advocates in the schedules to the Regulations themselves. However, in respect of advocates, that position changed in 2018, when the “Banding of Offences” document was produced. As from 31 December 2018, version 1.2 of that document applies. Under Table A, category 1 relates to offences of murder and manslaughter. The bands within category 1 are as follows:
  - “1.1: Killing of a child (16 years old or under); killing of two or more persons; killing of a police officer, prison officer or equivalent public servant in the course of their duty; killing of a patient in a medical or nursing care context; corporate manslaughter; manslaughter by gross negligence; missing body killing.
  - 1.2: Killing done with a firearm; defendant has a previous conviction for murder; body is dismembered (literally), or destroyed by fire or other means by the offender; the defendant is a child (16 or under).
  - 1.3: All other cases of murder.
  - 1.4: All other cases of manslaughter.”
4. Counsel rely upon the phrase “killing of a police officer, prison officer or equivalent public servant in the course of their duty” in support of their claim that band 1.1 is appropriate. The determining officer did not consider that to be the case and so used “the defendant as a child” phrase to calculate the fees based on band 1.2.
5. There is some measure of agreement in respect of the phrase “or equivalent public servant in the course of their duty” between the determining officer’s written reasons; counsels’ written submissions and the oral submissions by Mr Wright on behalf of both counsel at the hearing of this appeal. The written submissions of Francesca Weisman on behalf of the Legal Aid Agency’s Central Legal Team, and the oral

submissions of Margaret-Victoria Quarshie, who appeared at the appeal hearing, appeared to divert from some elements of what appeared to be common ground.

6. In particular, in the written reasons, the determining officer says that she “accepts that the victim was a public servant, and that, having been killed by a foster child in her care at the time she was caring for said child, she was killed in the course of her duties.” A couple of the paragraphs of the LAA’s submissions appeared to row back from this acceptance by suggesting that some foster carers are actually provided by private bodies. As such, it was suggested that foster carers were not necessarily public servants.
7. I indicated at the hearing that this was not a path I proposed to tread in this decision. The submissions are, it seems to me, really aimed at the question of whether a foster carer is an “equivalent” public servant rather than a public servant at all. But to the extent that the submission really is intended to cast doubt on whether the foster carer was a public servant, I think it is unfortunate that a clear position set out in the written reasons (as quoted above) is undermined in the LAA’s submissions. The appeal is from the determining officer’s written reasons and appellants must be entitled to rely on those reasons to set out the scope of the issue. It would only be in the most unusual case that such an approach by the LAA on an appeal might be countenanced and it would need to be couched in much clearer language than is the case here.
8. In her written reasons, the determining officer continues:

“The issue is, therefore, whether or not a “foster carer” is a public servant equivalent to a police officer or prison officer.”
9. The determining officer refers to the decision of Costs Judge Whalan in R v Wisniewski [2023] EWHC 216 (SCCO) where he concluded that a Boat Licensing Ranger was engaged in duties which established a sufficient equivalence to that of a police or prison officer. That decision also referred to a case decided by Costs Judge Leonard (R v Earnshaw & Gaukroger). In that decision, the victim was the night shift supervisor in a factory of a pharmaceutical manufacturer. He was considered to be the employee of a private company protecting his employer’s property and as such was not a public servant. Costs Judge Whalan distinguished that case as a result in Wisniewski and, given the acceptance of the victim’s status by the determining officer in this case, I do not think that the case of Earnshaw is material to this decision either.
10. The determining officer describes the purpose of foster care, and therefore the job of a foster carer, as being to provide a stable family environment for a child who cannot live with their birth parents. The “custody and control” exercised by the foster carer in this context is the same as the foster carer’s own children. It is not the same as that exercised by a prison officer or a police officer or indeed a custody officer in a youth detention centre as described by counsel in their request for redetermination. In the determining officer’s view, although the victim was a public servant she was not performing a role equivalent to that of a police or prison officer and that description simply did not fit the situation. The written and oral submissions of the LAA supported this approach of the foster carer’s role being more akin to a parent than a police or prison officer.

11. Mr Wright referred to the origin of the phrase of a police officer or prison officer acting in the course of their duties as an amendment to the Criminal Justice Act 2003 and which was an aggravating factor when a defendant came to be sentenced. Mr Wright suggested that the Banding of Offence table was deliberately wider. Although the prospect of a public servant acting in the course of their duties was, fortunately very small (and therefore there was little point in attempting to list the possibilities), things had moved on significantly since the CJA 2003.
12. Mr Wright's key submission was that not all of a police officer's duties involved public duties where there may be, for example, public disorder which resulted in the death of that officer. Many police officers had no public facing role in that sense but were responsible for people in their care, often with mental health issues. They are responsible for such people as part of their statutory duty. In the same way, the foster carer was seeking to uphold her public duty in caring for TA by trying to stop him from driving away.
13. Mr Wright suggested that the case of R v Wisniewski also held some similarities with the facts of this case although it was clearly not on all fours. In particular, the Boat Licensing Ranger was not issuing enforcement notices or similar but was simply carrying out of a court order.
14. The relevant background from the case of Wisniewski is as follows:

“On 26<sup>th</sup> April 2021, the Defendant murdered Mr Clive Porter, a Boat Licensing Ranger employed by the Canal & River Trust. Mr Porter was a retired police officer; he had served with Hertfordshire Police for over 30 years. It was alleged that the Defendant had fallen into a disagreement with Mr Porter as he attempted to place an enforcement notice (or letter) on a boat moored next to that occupied by the Defendant. Eyewitnesses described a disagreement between the men, but no-one actually saw the assault which led to Mr Porter's death. His body was found subsequently in a shallow ditch. It was asserted that he had been strangled and/or drowned by the Defendant.”
15. It is not, in my view, a persuasive description of this altercation as the carrying out of a court order, rather than issuing an enforcement notice, but it perhaps matters little in this context. The events are easily pictured as being the sort of situation where a police officer would be interacting with the public. Costs Judge Whalan described this as a public facing situation and that is the description which Mr Wright has sought to widen in this case to other situations where a public servant is carrying out other duties of care to the public.
16. Mr Wright's argument regarding the wide activities of police officers has some attraction and I have spent some time considering it. Ultimately, however, I have come to the conclusion that the facts of this case and the duties being carried out by the foster carer, do not fall within the depiction of equivalence to a police officer or prison officer.
17. It seems to me that, to be equivalent, there has to be a role which relates to the notion of the police officer, or prison officer, keeping or restoring order in a situation where

there is a threat of disorder in some fashion. Whilst I accept that the role of both kinds of officer is wider than this notion, including the caring for distressed or vulnerable individuals, I do not consider that to be the nature of the role intended to be encompassed by Band 1.1.

18. The murder of a police officer or prison officer was originally an aggravating factor in the CJA 2003. The aim was plainly to be a deterrent, or at least, to ensure that assailants of police (or prison) officers carrying out their duty would be aware that their sentences would be heavier than would otherwise be the case.
19. Translating that into the Banding of Offences document, the murder of a police officer, prison officer or equivalent public servant should be seen as an aggravated form of murder taking the claim above Band 1.3 for an 'ordinary' murder and into Band 1.1. In order for that to occur, it seems to me that the circumstances of the murder have to involve the archetypal activities of a police officer in dealing with the public (or a prison officer dealing with a prisoner) where there is a breakdown, or potential breakdown, of law and order.
20. In colloquial terms, the public servant needs to be running towards the trouble, rather than away from it, in the same way that police officers and other 'first responders' are said to do. I appreciate that the foster carer literally moved towards the danger in terms of seeking to stop the car from moving, but her activities were, in my judgment, ones born from acting in loco parentis rather than in any way involving the public generally.
21. Consequently, I do not accept the argument of counsel in their appeals that the determining officer used the wrong band of offence with which to calculate the graduated fee. Rather he used the correct band of 1.2 for the defendant being a child under sixteen and accordingly, these appeals fail.