



Neutral Citation Number: [2023] EWHC 54 (KB)

Case No: QA-2021-000269

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ON APPEAL FROM R v Atkinson and Khan**  
**SCCO Refs: 2019-CRI-000063 and 2019-CRI-000135**

Royal Courts of Justice,  
London, WC2A 2LL

Date: 18/01/2023

**Before :**

**MR JUSTICE CHOUDHURY**  
**sitting with**  
**SENIOR COSTS JUDGE GORDON-SAKER**  
**ALEXANDRA HEALY KC**

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**Between :**

**SIMON CSOKA KC**  
**- and -**  
**THE LORD CHANCELLOR**

**Appellant**

**Respondent**

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**Simon Csoka KC** (in person) for the **Claimant**  
**Florence Iveson** (instructed by Government Legal department) for the **Respondent**

Hearing dates: 10/10/2022  
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**Judgment Approved by the court**  
**for handing down**

## MR JUSTICE CHOUDHURY :

### Introduction and Factual Background

1. I have been assisted in this matter by Senior Costs Judge Gordon-Saker and Ms Healy KC, although the decision is mine alone.
2. The Appellant, Mr Csoka KC, represents himself. He appeals under Regulation 30 of the *Criminal Legal Aid (Remuneration) Regulations* 2013 (“the 2013 Regulations”) against the decision of Costs Judge Jennifer James in the cases of *R v Atkinson* and *R v Khan*. The issue is whether the claims for fees were assessed correctly, and, in particular, whether the correct banding under the Advocates’ Graduated Fee Scheme (“AGFS”) was applied.
3. The factual background in the cases of *R v Atkinson* and *R v Khan* may be briefly summarised as follows. The Appellant represented Mr Jordan Charles Atkinson in Manchester Crown Court in an 8-handed trial for murder and attempted murder. Atkinson was accused of involvement in the shooting of two victims, one of whom was killed and the second was injured. Atkinson was acquitted of the offences of murder and attempted murder, but was convicted of other offences.
4. The Appellant also represented Mr Mohammed Nisar Khan in Bradford Crown Court in a trial for one count of murder and one count of attempted murder. Mr Khan had driven a car deliberately at two pedestrians, one of whom was killed and the other seriously injured. Mr Khan was convicted on both counts.
5. The Appellant sought payment in both cases under Band 1.1 of the AGFS Banding Document (“the Banding Document”) for the “killing of two or more persons”, Band 1.1 being one of four bands (1.1 to 1.4) applicable to offences of “Murder/Manslaughter”. The Determining Officer in each case rejected that claim and instead assigned them to the lower Band 1.3: “All other cases of murder”. It is not in dispute that, irrespective of whether or not the Determining Officer erred in not assigning the cases to Band 1.1, Atkinson’s offence should, on any view, have been assigned to Band 1.2 for “killing done with a firearm”.
6. The Appellant appealed against both decisions under Regulation 29 of the 2013 Regulations. The cases were considered together on appeal as they both raised the same issue as to the correct band to be applied in cases where the charges included both murder and attempted murder. The Appellant argued that the Banding Document is *ultra vires* in that, contrary to the 2013 Regulations, it wrongly categorises attempted murder in a separate lower band than murder. It was further argued that, in any event, whether the banding was *ultra vires* or not, as a matter of logic and to avoid absurdities and anomalies, an indictment which charged murder and attempted murder in respect of two or more victims should be remunerated at the higher Band 1.1 rate.
7. By a written decision issued on 15 June 2021, Costs Judge James rejected the appeals and upheld the banding decisions applied by the Determining Officer in each case. Upon the Appellant’s application, Costs Judge James certified the following question for this Court:

“Does the proper interpretation of paragraph 3(1)(b) of the [2013 Regulations] mean that, on an indictment charging a count of murder and a count of attempted murder, counsel’s fee should be assessed as band 1.1 “killing of two persons” or by reference to the banding of the count of murder alone (band 1.2 or band 1.3)?”

## The Legal Framework

8. Section 2 of the **Legal Aid, Sentencing and Punishment of Offenders Act 2012** (‘LASPO’), so far as relevant, provides:

“2 Arrangements

...

(3) The Lord Chancellor may by regulations make provision about the payment of remuneration by the Lord Chancellor to persons who provide services under arrangements made for the purposes of this Part.

(4) If the Lord Chancellor makes arrangements for the purposes of this Part that provide for a court, tribunal or other person to assess remuneration payable by the Lord Chancellor, the court, tribunal or person must assess the remuneration in accordance with the arrangements and, if relevant, with regulations under subsection (3).

...”

9. The regulations made pursuant to the power under s.2(3), LASPO are the 2013 Regulations.

10. Regulation 4(1) of the 2013 Regulations provides:

“Claims for fees by a trial advocate in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 1 to these Regulations.”<sup>1</sup>

11. This makes it clear that the making and determination of any claim for fees is governed by Schedule 1 to the 2013 Regulations. The key paragraph of that Schedule for present purposes is paragraph 3. In its original form, upon enactment, it provided as follows:

“(1) For the purposes of this Schedule—

(a) every indictable offence falls within the Class under which it is listed in the **Table of Offences** and, subject to sub-

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<sup>1</sup> This is the wording since amendments made in 2015. The original wording of Regulation 4(1) referred to ‘an instructed advocate’ rather than ‘a trial advocate’

paragraph (2), indictable offences not specifically so listed are deemed to fall within Class H;

(b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977 (the offence of conspiracy), incitement to commit an indictable offence and **attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981 (attempting to commit an offence) fall within the same Class as the substantive offence** to which they relate;’ [Emphasis added]

12. The class of the offence determined the fee payable in relation thereto. The table of offences was provided at Paragraph 1 of Part 7. The most serious offences were classified as Class A:

<i>Offence</i>	<i>Contrary to</i>	<i>Year and Chapter</i>
<b>Class A: Homicide and related grave offences</b>		
Murder	Common law	
Manslaughter	Common law	
Soliciting to commit murder	Offences against the Person Act 1861, s.4	1861 c. 100
Child destruction	Infant Life (Preservation) Act 1929, s.1(1)	1929 c. 34
Infanticide	Infanticide Act 1938, s.1(1)	1938 c. 36
Causing explosion likely to endanger life or property	Explosive Substances Act 1883, s.2	1883 c. 3
Attempt to cause explosion, making or keeping explosives etc.	Explosive Substances Act 1883, s.3	As above

13. Paragraph 1 of Part 7 has been amended on various occasions, including most recently on 1 April 2018 by way of the *Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018/220* (‘the 2018 Regulations’), pursuant to which Paragraph 1 of Part 7 was moved to Schedule 2, part 7.
14. The 2018 Regulations also amended Paragraphs 3(1)(a) and (b) of Schedule 1, such that they now refer to the “AGFS Banding Document” rather than the “Table of Offences”:

“(1) For the purposes of this Schedule—

(a) every indictable offence **falls within the band of that offence set out in the AGFS Banding Document** and, subject

to sub-paragraph (2), indictable offences not specifically so listed are deemed to fall within [band 17.1];

(b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977 (the offence of conspiracy), incitement to commit an indictable offence and **attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981** (attempting to commit an offence) fall within the same band as the substantive offence to which they relate;" [Emphasis added]

15. As with the previous system, the fee payable in relation to representation at trial for a particular offence is determined by the band into which it is placed. Paragraph 1 of Schedule 1 to the 2013 Regulations defines "band" for these purposes as follows:

"(7) A reference in this Schedule to a "band" is to the band of the offence concerned set out in Table B in the AFGS Banding Document, as read in conjunction with Table A in that document.

(8) Where the band within which an offence described in Table B in the AGFS Banding Document falls depends on the facts of the case, the band within which the offence falls is to be determined by reference to Table A in that document."

16. Thus, one must first identify the "band of the offence" as set out in Table B of the Banding Document. Where, as is the case for the Band 1 offence of "Murder/Manslaughter", there is more than one potential band specified in Table B, the reader is directed to Table A to determine which particular band is applicable. For Murder/Manslaughter, there are four potential bands – 1.1 to 1.4 – and the relevant part of Table A of the Banding Document provides:

Category	Description	Bands
1	Murder/Manslaughter	<p><b>Band 1.1:</b> 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.</p> <p><b>Band 1.2:</b> 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).</p> <p><b>Band 1.3:</b> All other cases of murder.</p> <p><b>Band 1.4:</b> All other cases of manslaughter.</p>

17. Band 3 Offences in Table B are those of “Serious Violence”. The offence of “Attempted Murder” can be either band 3.1 or 3.2, and the reader is once again directed to Table A, which, so far as relevant, provides:

Category	Description	Bands
3	Serious Violence	<p><b>Band 3.1:</b> Attempted murder of a child, two or more persons, police officer, nursing/medical contact or any violent offence committed with a live firearm.</p> <p><b>Band 3.2:</b> All other attempted murder.</p> <p><b>Band 3.3:</b> S18.</p> <p><b>Band 3.4:</b> s20 Offences Against the Persons Act cases and other serious violence offences specified in Table B</p>

18. The basic fees corresponding to these bands are set out in a table at paragraph 5 of Schedule 1 to the Regulations. The relevant entries provide:

<i>(1) Band of offence</i>	<i>Amount of basic fee per category of trial advocate</i>		
	<i>(2) Junior Alone or Led Junior</i>	<i>(3) Leading Junior</i>	<i>(4) Queen’s Counsel</i>

1.1	£9,873	£14,812	£19,746
1.2	£4,939	£7,412	£9,879
1.3	£2,961	£4,445	£5,923
1.4	£2,467	£3,703	£4,934
2.1	£9,873	£14,812	£19,746
2.2	£2,961	£4,445	£5,923
3.1	£4,065	£6,101	£8,131
3.2	£2,323	£3,485	£4,646

19. Pursuant to Paragraph 27 of Schedule 1 to the 2013 Regulations, where the defendant has been charged with more than one offence, the trial advocate can select the offence upon which they rely for the purposes of claiming a fee.

### **Grounds of Appeal**

20. The two grounds of appeal are that:
- i) The Banding Document is *ultra vires* in that it wrongly categorises attempted murder as a separate band to murder; and
  - ii) In any event, on a proper interpretation of the Regulations and the Banding Document, an indictment which charges murder and attempted murder in respect of two or more victims should be classed as Band 1.1 (“killing of two or more persons”) and remunerated accordingly.

### *Submissions*

21. Mr Csoka submits that, as Paragraph 3(1)(b) of Schedule 1 to the 2013 Regulations clearly stipulates that “attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981 (attempting to commit an offence) fall within the same band as the substantive offence to which they relate”, it was not open to the Lord Chancellor to place the offence of attempted murder in a separate lower band to the substantive offence of murder to which it relates. The banding for attempted murder is therefore *ultra vires* the 2013 Regulations and should not be applied. To do otherwise leads to serious anomalies and absurdities in the scheme for remuneration in that, for example, a higher fee would have been payable had both victims survived, thus entitling the Advocate to payment at Band 3.1 (Attempted murder of two or more persons), rather than the rate for Band 1.3 (All other cases of murder).
22. Ms Iveson, who appears for the Lord Chancellor, submits that the Banding Document cannot be said to be *ultra vires* because nothing in it purports to cut down or negate

any rights established by primary legislation. Section 2(3) of LASPO confers a broad discretion on the Lord Chancellor to make provision for the payment of remuneration to trial advocates. What Mr Csoka identifies as being *ultra vires* is in fact, at most, an internal inconsistency within the 2013 Regulations between two provisions as to payment, both of which are within the scope of the broad discretion afforded to the Lord Chancellor and permissible. Ms Iveson further submits that the different approach taken in respect of attempted murder, as opposed to that in respect of attempts in respect of other offences, is not arbitrary but the result of “detailed discussion between the Ministry of Justice and the Bar and two public consultations”.

### *Ground 1 - Discussion*

23. The starting point in the determination of the *ultra vires* argument is the legislation under which the impugned provision was made. That provision is s.2(3), LASPO. As Ms Iveson submits, this confers on the Lord Chancellor a very broad discretion as to the provisions for payment of remuneration. There is nothing in s.2(3) that requires any specific level of remuneration or approach to the hierarchy between different offences, such matters being left entirely to the Lord Chancellor’s discretion.
24. Paragraph 3(1)(a) of Schedule 1 to the 2013 Regulations (as amended) provides that “every indictable offence falls within the band of that offence set out in the [Banding Document], and ... indictable offences not specifically so listed are deemed to fall within band 17.1”. The Banding Document, incorporated by reference into the 2013 Regulations, is thereby determinative of the band into which every listed indictable offence falls. In respect of attempted murder, the Banding Document stipulates that such offences fall into Band 3. The Banding Document is extensive and identifies bands (in Table B) for no fewer than 915 offences in 17 categories; it is clearly intended to be as comprehensive as it can be in respect of indictable offences.
25. Paragraph 3(1)(b) of Schedule 1 to the 2013 Regulations does state that “conspiracy to commit an indictable offence ..., incitement to commit an indictable offence and attempts to commit an indictable offence ... fall within the same band as the substantive offence to which they relate” (“the inchoate offences”). However, given the comprehensive nature of the Banding Document, which is intended to relate to “every indictable offence”, it is reasonable to construe paragraph 3(1)(b) as to the banding of inchoate offences as being intended to apply only insofar as no other specific provision has been made for a particular inchoate offence in the Banding Document. That reading of the provisions is consistent with the principle of statutory interpretation that the provisions of the relevant instrument (including those incorporated by reference) are to be construed as a whole and, if possible, in a way which renders consistent its various provisions (see *Lord Chancellor v Woodhall* [2013] EWHC 764 at [14]). In the case of attempted murder, express provision is made in the Banding Document by placing it in Band 3, and the provisions of paragraph 3(1)(b) do not override that express provision. On this reading of the 2013 Regulations and the Banding Document, there is no inconsistency at all between that paragraph and the Banding Document, and certainly nothing that would suggest that anything in the Banding Document is *ultra vires*.
26. Even if I am wrong about that approach to the interpretation of paragraphs 3(1)(a) and (b) of Schedule 1 to the 2013 Regulations, and there is an inconsistency between paragraph 3(1)(b) and the Banding Document, the banding of attempted murder



would not be *ultra vires*. As discussed above, s.2(3), LASPO does not confer a right to any particular level of remuneration at all or as to remuneration levels based on any particular hierarchy of offence. As such, the Lord Chancellor's broad discretion under that section entitles him to set remuneration levels differently as between murder and attempted murder. In doing so, he has not cut down or negated any particular right established by the legislation: see *R (on the application of Al-Enein) v Secretary of State for the Home Department* [2020] 1 W.L.R. 1349, where Singh LJ stated (at [28]) that subsidiary legislation will be *ultra vires* where:

“...it seeks to cut down or negate rights which have been created by primary legislation. The same would also apply to a governmental policy, which does not have the force of legislation. This is simply an example of the fundamental principle that the executive cannot act in a way which is inconsistent with the will of Parliament.”

27. Although the Banding Document is not a policy document as was the subject matter in *R (Al-Enein)*, the same principle would apply here.
28. Given that, on this analysis, the banding of attempted murder is not *ultra vires*, the apparent inconsistency with Paragraph 3(1)(b), which stipulates that the inchoate offence falls in the same band as the substantive offence to which it relates, amounts to little more than a drafting oversight in that the words “save in respect of attempted murder” (or some such exception) were not included in the 2018 amendment of that paragraph.
29. Moreover, it cannot be said that this exception in respect of attempted murder is arbitrary or the result of any obvious error. I am told (as was the Judge) that the Banding Document was the “product of detailed discussions between the Ministry of Justice and the Bar and two public consultations” and that the distinction between murder and attempted murder was agreed upon in the course of those discussions. There is evidence before me (which was not adduced below) as to the Bar Council's proposals for the Banding Document, which are contained within a document entitled “Bar Council's Advocates' Graduated Fee Scheme (AGFS) Working Group Proposal for a new Scheme”. This document contains the following statement:

“All inchoate offences are to be included and paid at the rate for the substantive offence. The exception to this rule is in cases of attempted murder that fall into Category C ‘Serious Violence.’” [Appendix 1, p16, §a]
30. The distinction between attempted murder and murder for fee purposes was therefore something that was expressly considered and apparently endorsed by the profession's representative body, albeit that the distinction was not one that had universal support.
31. I should also mention here that part of the reasoning below in concluding that the Banding Document was not *ultra vires* was that “it fulfils a logical aim in differentiating between cases of murder where the starting point for sentencing is 15 years, 30 years or whole life.” Ms Iveson, in her oral submissions at least, did not seek to uphold that aspect of the Judge's reasoning. She was right not to do so. There is no material before me to suggest that the sentencing regime for murder and attempted

murder played any part in the different approach to banding for these offences. In any event, as Mr Csoka correctly points out, any comparison with the sentencing regime is likely to throw up as many differences of approach between the two schemes as similarities such that no meaningful comparison can be drawn. One example, set out in Mr Csoka's skeleton argument, is that of taking a knife to the scene; that would attract a higher starting point for the purposes of determining the minimum term of a life sentence, but, under the Banding Document, it would fall into Band 1.3 (All other cases of Murder) unless one of the features for a Band 1.1 offence were present.

32. As to Mr Csoka's argument that the exception for Attempted Murder leads to anomalies when applying the Banding Document, that may well be right, but it does not mean that the exception is *ultra vires*. Any scheme for remuneration based on determinative bands is likely to result in at least some anomalous outcomes, some of which might be more or less favourable to the Advocate than the strict application of logic might suggest. That is the price that must be paid for a comprehensive scheme that can be applied by Determining Officers quickly and easily. As Leggatt J (as he then was) stated in *Lord Chancellor v Woodhall* [2013] EWHC 764 in dealing with an apparently unfair remuneration outcome under an earlier scheme:

“18. I am sorry to have reached that conclusion, as my understanding is that Mr Woodhall had to undertake a substantial amount of work in preparing for trial in this case, for which the fee for a guilty plea may be sparse remuneration. However, as Mr Woodhall pointed out in his submissions, the principle on which the scheme is based is not one of providing fair remuneration by reference to the amount of work done, but is a rule-based system. In words that he quoted from the case of *R v Grigoropolou* [2012] 5 Costs LR 982, and as the judge observed in that case, “there is no equity in a scheme which would permit the court to put right perceived injustices, because its modus operandi is one of roundabouts and swings”.

33. Costs Judge James considered that case and said as follows:

“51. It is in the nature of the AGFS that it will produce anomalies; there is inevitably a ‘price’ to be paid for the certainty that comes with such a scheme and that includes the possibility of cases which will attract a lower fee than a less serious and onerous case. *Atkinson and Khan*, where the Appellant will receive less money because one victim in each case died, than he would if both had survived, are prime examples of this phenomenon but, as Leggatt J put it these are swings and roundabouts and part of the way that the AGFS operates.”

34. I agree.

35. For these reasons, Costs Judge James was not wrong to conclude that the Banding Document was not *ultra vires*. Ground 1 of the appeal therefore fails and is dismissed.

## Ground 2

### *Submissions*

36. Mr Csoka's alternative submission is that, on a correct interpretation of the Banding Document, the cases of *Atkinson* and *Khan* should fall within Band 1.1. He notes that a defendant charged with the murder of two people would face two counts of murder, it being the practice to charge a separate count of murder for each person killed. He submits that, as such, the assessment of whether a murder falls into Band 1.1 would necessitate looking at the other count even though the latter might not have been the one selected by Counsel pursuant to paragraph 27 of Schedule 1 for the purposes of claiming a fee. In looking at the other offence, there is no requirement, he submits, for the second count to be a "completed murder" in order to amount to the "killing" of a person within the meaning of Band 1.1: it is sufficient that the second count involves an offence that "represents the killing" (including the attempted killing) of at least one other person. Failure to take that approach, and insisting upon there being at least a second death, is misconceived, as demonstrated by the fact that a conspiracy to kill more than one person where there was only one death would then have to fall into Band 1.3 as there was no second death. If it is accepted that "killing" can include situations where there is no murder and/or no death results then the attempted murder of a second victim should count as representing the "killing" of that victim.
37. Mr Csoka further submits that taking this approach would mean that a murder and a manslaughter would qualify as a Band 1.1 matter involving the killing of two persons, as would a murder and a death by dangerous driving, provided that there are at least two victims.
38. Ms Iveson accepts that it is the practice to charge the murder of two people as two separate counts on the indictment and that it would therefore be necessary to look at more than the selected count to determine whether there had indeed been the "killing of two or more persons" to satisfy Band 1.1. However, Ms Iveson maintains that, save for the inchoate offences in respect of which the deeming provision under paragraph 3(1)(b) of Schedule 1 applies, there clearly would need to be a second victim who had died. That, she submits, is the plain and ordinary meaning of the word "killing". There is no warrant for Mr Csoka's contention that "killing" could include an act, such as attempted murder, that did not result in death.

### *Ground 2 - Discussion*

39. The starting point when applying the Banding Document is to identify the category and band of the offence in Table B; one only gets to Table A if it is necessary to determine the precise band by considering the facts of the case. Here, the Table B Category is "Category 1: Murder/Manslaughter" and the corresponding band is described as "1.1 or 1.2 or 1.3 (See Table A)". Table A provides that the offence will fall into Band 1.1 if the murder involves (amongst other things), the "killing of two or more persons".
40. It is correct, as both Counsel agreed, that the Determining Officer might have to look at counts on the indictment other than the one selected in order to determine whether

Band 1.1 was satisfied. That is because, e.g. a double murder would invariably be charged under two separate counts, one for each victim. However, the statutory basis for considering other counts is not obvious. Pursuant to paragraph 27 of Schedule 1, the fee payable must be based on the offence selected by the trial advocate. That would appear to preclude consideration of other offences on the same indictment for the purposes of determining the band. However, paragraph 3(1)(d) of Schedule 1 provides:

“where more than one count of the indictment is for an offence in relation to which the band depends on the value, amount or weight involved, that value must be taken to be the total value, amount or weight involved in those offences...”

41. This provision would appear to be directed mainly at offences such as dishonesty offences (where the banding depends on the amount of money or the number of pages involved) or drugs offences (where the banding can depend on the weight or number of drugs or pages of evidence involved). However, whilst it is somewhat jarring to refer to the number of victims in a charge of murder and/or manslaughter as an “amount” for these purposes, it seems to me that in this case, where the precise banding does depend on whether there were two or more persons killed, one could invoke this provision as the statutory basis for taking into account a second count of murder on the same indictment notwithstanding the fact that it is not the offence ‘selected’ for the purposes of paragraph 27 of Schedule 1.
42. Here, there is no second count of murder (or manslaughter) on the indictment in either case. Instead, the second offence is the different one of attempted murder, which has its own band under the Category 3 heading of “Serious Violence”. The question is whether one can take that second offence into account for the purpose of determining the band into which the selected offence (i.e. murder) falls. In my judgment, that is not a permissible course of action, not only because attempted murder is a separate offence within the Banding Document, but also because it does not involve a “killing”.
43. The natural and ordinary meaning of the term “killing” in this provision is that death has resulted. That meaning is supported by the fact that the relevant offence category here is that of “Murder/Manslaughter”, neither of which would arise in the absence of a death.
44. Mr Csoka’s submission, however, is that a conspiracy to murder could fall within Band 1.1 even though there is no death and that, as such, “killing” must fall to be construed more broadly. That submission is misconceived: the only reason that a conspiracy to commit the murder of two or more persons would fall within Band 1.1 is the operation of the deeming provision in paragraph 3(1)(b) of Schedule 1, which states that a “conspiracy to commit an indictable offence... fall[s] within the same band as the substantive offence to which [it] relate[s]”. The substantive offence here is that of murder, which necessarily involves causing death. The effect of the deeming provision is to place a conspiracy to commit that offence in the same band. Thus, if there is a conspiracy to murder two or more persons, it would, pursuant to that provision, fall within Band 1.1 notwithstanding the absence of any deaths. However, that does not have any bearing on the interpretation of the term “killing” as it relates to the substantive offence of murder.

45. Manslaughter does involve the killing of a person. Moreover, manslaughter falls within the same offence category as murder in Table A and is subject to the same banding (save for Band 1.3) as for that offence. Thus, where a defendant is charged with the murder of one victim and the manslaughter of another, the appropriate band would be Band 1.1, as the offences (both falling within the same Band 1 offence category of Murder/Manslaughter) involve the killing of two or more persons. It is the fact that manslaughter offences also fall within Band 1 that explains the use of the word “killing” in Bands 1.1 and 1.2: the use of the term, “murder” in these bands would have excluded manslaughter.
46. Attempted murder does not involve killing a person. Furthermore, for reasons already discussed, the deeming provision for inchoate offences does not apply to attempted murder even though it applies to other attempts. Accordingly, a count of attempted murder would not fall to be taken into account in determining whether Band 1.1 is to apply.
47. Mr Csoka also submits that if the second offence on the indictment were Causing Death By Dangerous Driving then that too could result in a Band 1.1 fee as two deaths were involved. The relevance of this submission is not entirely clear; it appears to have been made in support of the general proposition that “killing” should be construed as encompassing more than just “murder”, although it was no part of the Lord Chancellor’s case, as I understood it, that “killing” could refer only to death resulting from “murder”.
48. Ms Iveson was not able to enlighten the Court as to what would occur if a Determining Officer were faced with an indictment (perhaps arising out of a scenario where a defendant flees the scene of a murder in a car and in doing so runs over and kills a pedestrian) containing a count of murder and a count of causing death by dangerous driving. In my judgment, however, it would not be open to the Determining Officer to apply Band 1.1 in such a case. That is because the gateway to the Band 1.1 fee is that the offence is one of Murder or Manslaughter. Causing Death by Dangerous Driving appears in Table B under “Category 10: Driving Offences”, and falls into Band 10.1. Indeed, the same banding applies for all types of driving offences in Table B, and there is no warrant for considering any of those offences under Table A at all. Thus, in the scenario described above, whereby the indictment contains both a count of murder and a count of causing death by dangerous driving, the Advocate would be likely to select the former for the purposes of claiming a fee, and the latter offence would not affect the resulting band (1.3) notwithstanding the fact that it also involved killing someone.
49. For these reasons, Ground 2 of the Appeal also fails and is dismissed. Whilst Costs Judge James did not expressly address some of Mr Csoka’s arguments, her ultimate conclusion that the banding decision was correct was not wrong.

### **Conclusion and Answer to Certified Question**

50. The certified question was:

“Does the proper interpretation of paragraph 3(1)(b) of the [2013 Regulations] mean that, on an indictment charging a count of murder and a count of attempted murder, counsel’s fee

should be assessed as band 1.1 “killing of two persons” or by reference to the banding of the count of murder alone (band 1.2 or band 1.3)?”

51. The answer, for the reasons set out above, is, “*by reference to the banding of the count of murder alone*”. The appeal is dismissed.