

Costs Case Review:

When do submissions in mitigation cross the line into a *Newton* hearing ?

[Stuart Miller Solicitors v Lord Chancellor](#) [2025] EWHC 2149 (SCCO)

Substantial arguments about the categorisation of offending are central to many sentencing hearings but counsel and solicitors are poorly remunerated where there has been a guilty plea. This costs judgment, represents a significant milestone in the way guilty plea sentences are billed.

The judgement arose from an extraordinary set of facts which has been dubbed by the media as the ‘[Eunuch maker case](#)’ and has now been captured in an [Apple TV documentary](#). [Lisa Bald](#), represented the defendant, who pleaded guilty at the earliest opportunity to causing grievous bodily harm with intent, after he performed a consensual penectomy on the victim (removed his penis with a kitchen knife) in February 2017. In their sentencing note, the prosecution requested that the judge make factual findings:

- (a) whether the injuries were life-threatening,
- (b) whether the victim was vulnerable, and
- (c) whether a kitchen knife used in the procedure amounted to a “highly dangerous weapon.”

Each of these factors were determinative of where the matter fell on the sentencing guidelines.

On behalf of the Lord Chancellor, it was contended that the sentencing hearing did not require findings of fact, but was simply an exercise of judicial interpretation of where the behaviour alleged should be placed on the guidelines.

[Lisa Bald](#), representing Stuart Miller Solicitors, persuasively argued that these matters were not peripheral details but fundamental factual issues that the court was required to resolve before passing sentence. She stressed that the complexity of the case was far removed from a conventional guilty plea and instead demanded the more rigorous fact-finding associated with a *Newton* hearing.

Costs Judge Nagalingam agreed with these submissions noting that questions of harm and culpability, each with significant sentencing consequences, could not be answered without first making clear findings of fact. Crucially, the difference in sentencing ranges between the prosecution’s position (up to 16 years’ custody) and the defence’s case (as low as four years) demonstrated the necessity of that judicial determination.

As the learned Judge identified, the line between a *Newton hearing* and offence mitigation can sometimes be thin. However, where there are substantial disputes of fact, which have a bearing on categorisation, that must be resolved before passing sentence, the hearing will be a *Newton hearing*.

As a result of this decision, it is paramount that practitioners remember that it is not even necessary to have the word 'Newton' uttered at any point during the sentencing hearing. If the court is required to make factual findings, even if those findings require no live evidence, a Newton payment is possible.

This is a rare example of a judgment which recognises the hard work and preparation that goes into complex and serious sentencing hearings where categorisation is hotly disputed.

Lisa Bald and Raphael Hardy, Furnival Chambers