IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2019] EWHC 443 (Admin)

CO/2770/2018

Royal Courts of Justice

Tuesday, 29 January 2019

Before:

LORD JUSTICE LEGGATT

MR JUSTICE HOLGATE

B E T W E E N:

MILLMORE AND OTHERS — Appellants

- and -

ENVIRONMENT AGENCY — Respondent

J U D G M E N T

A P P E A R A N C E S

MR J HODIVALA (instructed by Tuckers Solicitors LLP) appeared on behalf of the First Appellant Millmore.

MR A McGEE (instructed by Tuckers Solicitors LLP) appeared on behalf of the Second Appellant Annetts.

MR I DANIELS (instructed by Tuckers Solicitors LLP) appeared on behalf of the Third Appellant Rowbottom.

MS E SANDERSON (instructed by Tuckers Solicitors LLP) appeared on behalf of the Fourth Appellant Parker.

MS S RITCHIE (instructed by Tuckers Solicitors LLP) appeared on behalf of the Fifth Appellant Smith.

MR A MARSHALL and MISS R VANSTONE (instructed by the Government Legal Department) appeared on behalf of the Respondent.

LORD JUSTICE LEGGATT:

1 The appellants are five employees of Southern Water Services Limited who have been convicted by a magistrates' court of offences under section 110(1) of the Environment Act 1995 of intentionally obstructing officers of the Environment Agency in the exercise of powers to enforce provisions of the Act designed to prevent pollution. They appeal against their convictions on the basis of a case stated for this court by District Judge Goldspring who conducted the trial at Folkestone Magistrates' Court.

2 Southern Water is a private water and sewage company responsible for public waste water and collection in several counties of southern England and for the supply of water in part of that area.

3 The prosecution of the appellants arose from an investigation carried out by the Environment Agency into potential breaches by the company of its obligations under the Act. In the course of the investigation, officers of the Agency visited a number of waste water treatment works operated by Southern Water between 11 and 13 July 2016. On these visits the officers met with what can, put at its lowest, be described as a lack of co-operation on the part of employees of Southern Water and in some cases with conduct which was clearly calculated to frustrate the inspection. As I have indicated, the appellants were all prosecuted for and convicted of offences of obstruction under section 110(1) of the Act. Southern Water, as a corporate entity, was also charged with such offences but was acquitted, as the district judge found that the prosecution had failed to prove that the company was criminally liable for the relevant actions of its employees.

4 It is not in dispute that the officers of the Environment Agency who visited premises of Southern Water on the relevant occasions were duly authorised by the Agency under section 108(1) of the Act to exercise powers specified in section 108(4) for statutory purposes. Those powers included the powers:

> "(a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
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> ...
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> (c) to make such examination and investigation as may in any circumstances be necessary;
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> ...
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> (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
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> …
>
> (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records –

(i) which are required to be kept under the pollution control enactments for the enforcing authority under whose authorisation he acts, or

(ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,

and to inspect and take copies of, or of any entry in, the records;

(l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section."

5 In relation to section 108(4)(k), it is accepted that the power to inspect and take copies of records includes the power to remove records from the premises for that purpose. That is clear from the decision of the House of Lords in *Cantabrica Coach Holdings Ltd v Vehicle Inspectorate* [2001] UKHL 60, [2001] 1 WLR 2288, which considered the proper interpretation of a similarly worded provision of the Transport Act 1968.

6 Subsections (1) and (2) of section 110 create two offences in the following terms:

"(1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.

(2) It is an offence for a person, without reasonable excuse, -

(a) to fail to comply with any requirement imposed under section 108 above;

(b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the execution of his powers or duties under or by virtue of that section; or

(c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to subsection (4) of that section."

7 Where an offence under section 110(1) involves obstructing an authorised person in the exercise of powers under section 108, as alleged in this case, the offence is triable summarily and on conviction the maximum sentence is a fine not exceeding level 5 on the standard scale (which now allows for the fine to be unlimited in amount). The same maximum penalty applies where a person is prosecuted and convicted of an offence under subsection (2).

8 The principal question of law on this appeal is whether the district judge was correct to hold that such conduct as found against each appellant is capable of amounting to an obstruction for the purpose of a charge under section 110(1) of the Act. Giving the word "obstruct" its ordinary meaning, section 110(1) is, in my view, reasonably understood as encompassing any act which prevents an authorised person from exercising powers that he has or which makes it more difficult for him to exercise his powers. I also consider that, in principle, an omission which has that effect is capable of amounting to an obstruction but only if the person charged with the offence was under a duty to do the act which he or she omitted to do. It cannot be an obstruction simply for a person not to do something which he or she has no duty to do.

This interpretation of section 110(1) is consistent with the case law summarised in Blackstone's Criminal Practice 2019 at B2.45 concerning the interpretation of section 89(2) of the Police Act 1996, which makes it an offence wilfully to obstruct a constable in the execution of his duty.

9 It has been submitted on behalf of the appellants that subsections (1) and (2) of section 110 should be interpreted as applying to different conduct such that there is no overlap between them. I see no reason why that should be so. Certainly, I would accept that the two provisions should, if possible, be interpreted in a way which does not make either of them redundant. But there is no question of that. As I interpret subsection (1), that provision is capable of encompassing numerous forms of conduct which will not fall within the scope of subsection (2). At the same time, subsection (1) contains the word "intentionally" and thus requires proof of *mens rea* which subsection (2) does not. Subsection (2), as I interpret it, creates an offence of strict liability, subject to a defence of reasonable excuse which is not available in relation to an offence under subsection (1). The elements of the two offences are, therefore, different. That does not mean that there cannot be facts proved in a particular case which disclose offences under both subsections.

10 It, therefore, does not follow, as the appellants have sought to argue, that the fact that a person could have been prosecuted for and convicted of an offence under subsection (2) means that he or she cannot be prosecuted for and convicted of an offence under subsection (1). I see no reason why, for example, a refusal to provide assistance to an Agency officer which the defendant was under a duty to provide should not give rise to an offence under subsection (2), if it occurred without reasonable excuse, and also to an offence under subsection (1), if it was done in the knowledge that it would obstruct an officer in the exercise of his powers.

11 Another point of general application raised by the appellants is whether the powers under section 108(4)(a) of the Act to enter premises, and under section 108(4)(k) to inspect records and, by implication, to remove them from the premises for the purposes of copying, may only be exercised with the consent of the occupier of the premises or the owner of the records, as the case may be. Section 108(4) does not contain any words which say or suggest that such consent is required; and it seems to me plain that the purpose of subsections (4)(a) and (k) is to enable officers to be authorised as a matter of law to enter premises and inspect records without requiring consent of the occupier or owner which would otherwise be necessary to confer such legal authority.

12 The point was made that section 108(4) does not confer a power to seize documents. I would accept that nothing in its provisions authorises the use of force. For that, a warrant is needed. But there is a difference between a situation in which officers are not entitled to use force without a warrant and a positive requirement to obtain consent before premises may be entered or documents inspected and taken for copying. I see no reason to infer or imply the latter requirement.

13 With regard to the entry on premises, this analysis is further confirmed by subsection (7) of section 108 which states:

> "Except in an emergency, where an authorised person proposes to enter any premises and –
>
> > (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
> >
> > (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

> any entry on to those premises by virtue of this section shall only be effected under the authority of a warrant by virtue of Schedule 18 to this Act."

14 Ms Sanderson, who represents one of the appellants, Mr Parker, placed reliance on paragraph 2 of Schedule 18 of the Act. This specifies conditions at least one of which must be satisfied before a power may be exercised by a magistrate to issue a warrant which authorises the exercise of a power under section 108 of the Act in relation to premises, if need be by force. Those conditions are:

> "(a) that the exercise of the power in relation to the premises has been refused;
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> (b) that such a refusal is reasonably apprehended;
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> (c) that the premises are unoccupied;
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> (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or
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> (e) that an application for admission to the premises would defeat the object of the proposed entry."

15 Ms Sanderson submitted that the need to satisfy at least one of these conditions indicates that an officer cannot enter premises which, for example, are unoccupied, or from which the occupier is temporarily absent, without a warrant – which in turn is said to indicate that the power of entry conferred by section 108(4)(a) cannot be exercised without the consent of the owner. But, in my view, that simply does not follow. Paragraph 2 of Schedule 18 does not set out circumstances in which it is necessary to obtain a warrant. Those are specified in section 108(7). It sets out only conditions which, if satisfied, will justify the issue of a warrant. Nothing in Schedule 18, in my view, detracts from the conclusion that the need for a warrant arises only where the use of force may be necessary and not simply because consent to entry has not been provided. When premises are unoccupied, for example, it is reasonable to anticipate that force may need to be used to effect entry, for instance, by breaking a lock.

16 In summary on this point, there is in my view no reasonable ground for reading into section 108 a requirement that consent of the occupier must be obtained before the power to enter premises may be exercised, and the same applies equally to the exercise of other powers under that section – in particular, the power to inspect records and take them away for copying under subsection (4)(k) which is at the centre of several of the charges in this case.

Helen Millmore

17 Turning to the individual case of the first appellant, Helen Millmore, the district judge found that on 12 July 2016 when officers of the Agency visited the company's Chichester Waste Water Treatment Works they were permitted to enter the premises and began to look for documents they wished to inspect. Ms Millmore, who is a management scientist employed by Southern Water, then entered the room and informed the officers that she had received instructions from the company's legal team to stop the Agency and to refuse to allow the officers to remove any items from the site. She also said that there would be no accompanied visit around the site and that the officers could not go unaccompanied for health and safety reasons. The district judge found as a fact that Ms Millmore had been instructed by an email from the company's lawyer to communicate the company's position to the Agency, which she

did, but that she did not otherwise physically do anything to obstruct the officers. The district judge concluded that Ms Millmore's conduct obstructed the officers by her failure to comply with a requirement in the exercise of their powers under section 108(4)(k), being their powers to inspect and take copies of records.

18 It seems to me that, in analysing the factual findings made in relation Ms Millmore, a distinction needs to be drawn between conduct which simply involved reporting to officers the position which her employer had chosen to adopt and conduct which involved positively implementing that position by, whether expressly or tacitly, telling officers of the Agency what they could or could not do.

19 Mr Marshall, on behalf of the respondent Agency, has argued with some force that the findings of primary fact made by the district judge justified an inference that Ms Millmore had crossed that line and had gone beyond merely communicating the company's position, trespassing into the territory of implementing that position by, in effect, telling the officers that they could not exercise their relevant powers. The proof, he submitted, is in the pudding that the officers did not persist in the face of what Ms Millmore said in seeking to exercise their powers but instead gave up at that point and left the site.

20 Whilst, however, the district judge might have been entitled on the evidence he heard to draw such an inference, it seems to me plain from the findings recorded in the case stated for this court that he did not do so. His findings on the question of breach simply say that Ms Millmore had been instructed to communicate the company's position to the Agency officers, which she did. No finding has been expressly, let alone clearly, made by the district judge that the line was crossed into implementing the company's position and, by telling the officers what they could or could not do, obstructing the exercise of their powers. The only basis on which the district judge has been willing to conclude that an offence of obstruction has been committed is that Ms Millmore is said to have failed to comply with a requirement in the exercise of the officers' powers under section 108(4)(k) – that is, their powers to inspect and take away documents for copying. But there has been no clear preceding finding of fact which is capable of justifying that conclusion. In particular, the district judge has not made any finding that Ms Millmore was under a duty to do any specific act to assist the officers which she failed to do.

21 In short, if an individual is to be found guilty of a criminal offence, it is necessary that there should be a clear and express finding of precisely what act or omission constitutes that offence – and which, in this case, amounted to an intentional obstruction contrary to section 110(1) of the Act. There has been no finding in the case of Ms Millmore which is sufficiently clear to be capable of justifying the conclusion as a matter of law that she committed an offence under that provision.

Peter Rowbottom

22 Turning to the next appellant, Peter Rowbottom, the position is different. In his case the district judge found that he is employed as a process operator by Southern Water and was present when Agency officers attended Queenborough Waste Water Treatment Works on 11 July 2016. The officers explained to him that the Agency was conducting an inspection under section 108 of the Act and handed him a letter which explained the Agency's powers and the information which the officers were seeking to obtain, including site diaries. Mr Rowbottom confirmed that he understood the contents of the letter. He proceeded then to find the site diaries as requested and handed them to the officers who put them into evidence bags. Mr Rowbottom was told that the diaries would be removed from the site, copied and then returned

at the earliest opportunity.

23 Mr Rowbottom then received a telephone call from his line manager Mr Brian Maynard. A number of conversations ensued between Mr Rowbottom, Mr Maynard and one of the Agency officers. Mr Rowbottom said to the officer that he had been told to inform her that the Agency could not take the diaries from the site and could make a request in writing for a copy of them. After a further call from Mr Maynard, Mr Rowbottom then said that he had been instructed to request the diaries back from the Agency and to take possession of them. He was told that it was an offence to obstruct the officers who were lawfully exercising their powers. After several further exchanges and whilst the officer was speaking directly on the telephone to Mr Maynard, Mr Rowbottom picked up the six diaries (which, as mentioned, had been placed in bags as an exhibit) from the table on which they had been put and took them out of the room. He then locked the diaries in a cupboard.

24 It seems to me as plain as can be on those findings that the district judge was entitled to conclude, as he did, that there was an obstruction of the officers in exercising their powers under section 108(4)(k) of the Act. Mr Rowbottom's conduct went beyond simply failing to assist the officers, and beyond even refusing to hand over records. He took the matter into his own hands and removed the diaries from the possession of the officers before locking them away in a cupboard. That clearly prevented the officers from exercising their powers under the Act.

25 The point is taken by his counsel, Mr Daniels, that the officers were not, in fact, prevented by the conduct of Mr Rowbottom from exercising any power which they intended to exercise and were in law entitled to exercise. The letter of authorisation which had been given to the officers and which they brought with them on their site visits contained a statement that "where to copy the records on site is not reasonable or practicable, authorised persons may temporarily remove records for off-site copying", and a reference was there made to the *Cantabrica* case. The findings made by the district judge included a finding that it was, as a general matter, reasonable and reasonably necessary in the circumstances to remove for off-site copying records located in the course of site visits which the Agency wished to inspect. However, the district judge did not make a finding that the particular officer who had bagged up the diaries handed to her by Mr Rowbottom and who evidently intended to remove them from the site for copying had applied her mind to the question of whether it was necessary and practicable to do so.

26 Mr Daniels submitted that in those circumstances the removal of the diaries from the site would not have been lawful. He argued that that is so because the officer concerned had not applied her mind to the question of whether it was necessary or reasonably necessary to remove the diaries for copying which, submitted Mr Daniels, was essential for a lawful and valid exercise of the power. Accordingly, the officer was not obstructed in the exercise of her powers.

27 I do not accept that submission. There is nothing in section 108(4)(k) of the Act which makes it a precondition of the right to remove records for copying that the officer concerned has thought about the question of whether it is reasonably necessary to do so and has made a judgment that it is so necessary. Nor, in my view, does the *Cantabrica* case import any such requirement.

28 There was some division of opinion in that case among the law lords as to whether it was necessary to show that removal of the documents from the site was reasonable or was reasonably required. No clear decision was made on that issue, which did not arise directly for determination. But there is nothing to suggest in this case that the removal of documents

from the site was unreasonable, nor was any finding to that effect made by the district judge. To the contrary, his general finding was that it was reasonable to remove documents for off-site copying. I do not accept that the fact that on the evidence the particular officer concerned had not weighed up the necessity for removing documents from the site rendered his intentions or his actions unlawful or enables Mr Rowbottom to avoid the conclusion that his conduct in taking possession of the diaries and putting them in a cupboard obstructed the exercise of powers under section 108.

29 On 13 July 2016 Agency officers returned to Queenborough Waste Water Treatment Works in order to locate and take possession, if possible, of site diaries. The gates were locked, preventing access to the site. Initially it appeared that no one was on the site but, following a telephone call to the company, Mr Rowbottom approached the officers from within the site. The officers explained the purpose of their visit. Mr Rowbottom stated that he would not let the officers on to the site and that he had been told by his boss, Mr Maynard, not to let them in. The officer asked Mr Rowbottom whether he understood he was committing an obstruction offence. Mr Rowbottom replied that he knew he was but his hands were tied. He then walked away. On the basis of those facts, the district judge found that on that occasion Mr Rowbottom obstructed the officers by refusing to allow them to enter the premises.

30 It is submitted by Mr Daniels on his behalf, relying on section 108(7) of the Act, that the district judge was not entitled to find that the officers on this occasion had any power to enter the premises. Section 108(7), which I quoted earlier, provides that, in the circumstances there specified, any entry on to premises by virtue of section 108 shall only be effected under the authority of a warrant. That is the position where an authorised person proposes to enter premises and, relevantly for present purposes, apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry.

31 The district judge found that the officers who proposed to enter Queenborough Waste Water Treatment Works on 13 July 2016 did not apprehend that entry was likely to be refused or that force might be needed to effect such entry. It follows that they were not precluded by section 108(7) from entering the premises without a warrant. Mr Daniels, nevertheless, has sought to rely on another finding made by the district judge regarding the state of mind of Mr Bolton, an Agency officer in operational charge of the searches. Mr Bolton gave evidence that the Agency considered that officers would not be permitted to enter Queenborough Waste Water Treatment Works on this visit but that officers were, nevertheless, sent to the site to request entry because it was thought that refusal to give them entry would bolster an application to obtain a warrant. The ambitious submission made by Mr Daniels is that the consequence of that finding about the view taken by Mr Bolton is that the finding regarding the apprehension of the officers who actually went to Queenborough on that day, to the effect that they did not expect or think that entry was likely to be refused, was an irrational finding that the district judge was not entitled to make.

32 That is an impossible conclusion for this court to draw, confined, as we are, to the facts stated in the case for this court. The mere fact that the district judge found that the Agency officer in overall charge of the searches thought that entry was likely to be refused did not preclude the district judge from finding, or make it irrational for him to find, that the officers actually on the ground who went to the premises had a different belief or expectation.

33 In any event, there is no finding that even Mr Bolton apprehended that the use of force might be necessary to effect entry, which is a condition that has also to be satisfied under section 108(7) before the conclusion is reached that entry to the premises may only be effected under the authority of a warrant issued under Schedule 18.

34 I would add that I am not satisfied that, even where it is shown that all the conditions stated in section 108(7) are met and that entry may only be effected pursuant to a warrant, it necessarily follows that a refusal to allow entry in response to a request to do so cannot amount to an obstruction of the officer who makes that request. Even assuming in favour of the appellants that that would be the logical conclusion, however, there is simply no basis for asserting that the district judge was bound to find that the relevant preconditions set out in subsection (7)(b) were met. I, therefore, see no merit in this argument, nor any other basis on which the conclusion of the district judge that Mr Rowbottom committed an offence on that occasion can be challenged.

Robert Parker and Matt Annetts

35 I turn next to the position of Robert Parker and Matt Annetts, both of whom were present at Portswood Waste Water Treatment Works on 12 July 2016. The district judge found that officers on that occasion lawfully entered the premises. The officers explained that they were carrying out an inspection and provided to Mr Parker their letter of authority, which also contained a notice at the start of the letter that it would be an offence intentionally to obstruct an authorised person in the exercise of his powers or, without reasonable excuse, to fail to comply with any requirement imposed under section 108, or otherwise to contravene the terms of section 110(2) of the Act.

36 On the findings made by the district judge, Mr Parker instructed Mr Annetts to assist the Agency and then left the office. Mr Parker subsequently, however, returned to the office and informed the officers that he had been told not to let the diaries leave the site. He was cautioned and told that he was committing an obstruction offence. He replied that he was acting under the instruction of the company solicitor. Mr Parker then instructed Mr Annetts to remove the bagged diaries from the possession of the Agency officers and to lock them in his van. Mr Annetts acted on that instruction.

37 In relation to Mr Annetts, the district judge found that there was no evidence that he was himself shown the legal letter which was shown to Mr Parker or had had its contents recited or explained to him. Mr Annetts, however, implemented Mr Parker's instruction to remove the bagged diaries from the officers' possession and locked them in his van, and the district judge found that that was an obstructive act.

38 In the case of Mr Annetts, it was further alleged that he had obstructed the officers in the exercise of their powers under section 108(4)(j) – that being the provision which requires persons to answer such questions as the authorised person thinks fit to ask and to sign a declaration of truth of his answers.

39 In relation to that allegation, the facts found by the district judge were that Mr Annetts was answering questions in accordance with 108(4)(j) when he received a telephone call. By that time he had in fact answered all the specific questions contained in the relevant section of the legal letter. After receiving the telephone call, which was from his superior Mr Parker, Mr Annetts informed the officers that he had been told not to answer any more questions. They did not in fact seek to ask him any more questions, but it was the evidence of the officer (Mr Scott) that he would have had more questions to ask had Mr Annetts not announced that he had been told not to answer any further questions.

40 Taking this last point first, I am unable to see that the facts found by district judge justified or amounted to a finding that Mr Annetts had intentionally obstructed an officer in the exercise of his power to answer questions. There is no finding that Mr Annetts was required to answer

any question which he failed or refused to answer. The mere fact that one of the officers had in his head questions that he would have liked to ask but, in the event, did not attempt to ask is far from being enough in my view to render anything that Mr Annetts did or did not do an obstruction of the exercise of the relevant power.

41 In relation to Mr Annetts' taking of the diaries and locking them in his van, however, that, on its face, was plainly an obstructive act. So too was Mr Parker's instruction to Mr Annetts to do those things.

42 It was argued on Mr Annetts' behalf by Mr McGee that evidence of these acts should have been excluded by the judge under section 78 of the Police and Criminal Evidence Act 1984 (PACE), either because Mr Annetts ought to have been but was not cautioned or because he was not supplied at the outset with a copy of what has been referred to as the "legal letter" which contained a warning that it would be an offence intentionally to obstruct an officer. Mr McGee accepts, as he is bound to do, that there is no requirement in section 108 that any letter or notice of that kind must be provided, let alone that, unless it is provided, no offence will be committed. The absence of such a letter might have given rise to a defence on the part of Mr Annetts that he lacked the necessary *mens rea* and did not intend to obstruct the officers because he did not know that they were exercising legal powers. However, no such argument was made on behalf of Mr Annetts at the trial and no such issue has been raised in the case stated. Mr McGee, therefore, realistically and rightly accepts that no such point is open to him on this appeal.

43 The arguments based on the proposition that evidence should have been excluded under section 78 of PACE are, in my view, all quite hopeless for multiple reasons.

44 The first question posed in the case stated by the district judge on this topic is whether, in the circumstances, there was a requirement under the PACE code of practice to caution Mr Annetts and, if so, at what point. Under the PACE code, any requirement to provide a caution occurs before questions are asked and gives rise to the need to warn the person to whom questions are directed that, if he refuses or fails to answer them, inferences might be drawn against him. On the facts found by the district judge, nothing occurred in this case in the course of questioning Mr Annetts which made it necessary to give any such caution. Even if there had been a need to give a caution, the occasion for it would have had nothing to do, so far as I can see, with Mr Annetts' subsequent conduct in taking possession of the diaries, as it is not - and could not be - suggested that the need to avoid that conduct would have been the subject matter of the caution.

45 In any event, what is sought to be excluded is not evidence that was obtained unfairly by reason of the failure to administer any caution but simply evidence given by the officers of events which subsequently happened. I see no reasonable basis for seeking to have that evidence excluded under section 78. Furthermore, on top of all that, section 78 at best confers on the trial judge a discretion. The district judge, in so far as he needed to do so, considered the matter and concluded that he should not, in fairness, exercise the discretion to exclude any evidence. It is quite impossible, on the basis of the facts found in the case stated, for this court to conclude that that was a decision that no reasonable judge in exercising his discretion could have reached.

46 Finally, the question is posed whether, irrespective of the issue of caution, the judge was correct not to exclude evidence of Mr Annetts' otherwise obstructive acts on the basis that he was not shown the legal letter and informed of the officers' powers. Similar points to those I have already made arise in relation to that question, starting with the point that there is no requirement, either of law or under any code of practice, that such a letter need be provided.

In any event, the district judge was perfectly entitled to conclude in the exercise of his discretion that on the facts found it was not unfair to exclude that evidence. More fundamentally, it could not have been unfair, as I see it, to exclude evidence which had not been obtained, even arguably, by any unfair means of facts which directly proved the commission of an offence, which is what the evidence given of Mr Annetts' conduct did.

47 For those reasons, I see no merit in any of the points taken on behalf of Mr Annetts and consider that the district judge was fully entitled to conclude that the facts found by him in relation to both Mr Parker and Mr Annetts constituted offences under section 110(1) of the Act.

Carl Smith

48 That leaves the last appellant, Carl Smith. The findings relevant to him relate to two site visits, both of which occurred on 12 July 2016. The first was a visit made by Agency officers to the Millbrook Waste Water Treatment Works. On that visit, Mr Smith, who was present, stated that he had been instructed by the company solicitor that no documents were to be removed from the site. However, by the time that this communication was made, officers had already obtained the relevant records which were being bagged as exhibits and the district judge found that no action was taken by Mr Smith to prevent that. The district judge further found that Mr Smith said to the officers that they could not walk around the site without legal representation as the company had not had reasonable notice of the Agency's visit. Mr Smith also informed the officers that he had been asked to request that they leave the site. However, despite saying that, he allowed them to remain on the site until all of the exhibits they had collected had been bagged and logged correctly, and only then did the officers leave the site.

49 In the light of those findings, it is unsurprising that the Agency, in the particulars that it gave of its case, did not allege that Mr Smith had obstructed officers in the exercise of the power to inspect and remove documents for copying under section 108(4)(k). The particulars were limited to allegations of interference with the exercise of powers under section 108(4)(c), (j) and (l). However, on the findings made by the district judge, I cannot identify any conclusion reached by him that there was a violation of any of those provisions.

50 The position is similar in relation to the later occasion on 12 July 2016 at Slow Hill Copse Waste Water Treatment Works. There, the district judge found that officers had lawfully entered the premises and that they served on Mr Smith a notice explaining their powers and provided him with a legal letter. He proceeded to read from his mobile phone that he wished to nominate the company solicitor to be present for any interviews, site walk-arounds and any further communication. He requested that the officers leave the site. He was cautioned for an obstruction offence, to which he replied, "no comment". He explained that the view he was conveying was that of the company solicitor, not a personal view. The officers then left the site.

51 After making those findings, all that the district judge then says in the case stated for this court is that he found as a fact that Mr Smith was acting on the company solicitor's instructions and relaying the company's wishes to the officers on both sites. He records that the Agency's case was that Mr Smith's refusal was evidence of the company's obstruction, and that the instructions Mr Smith received were those of the company. There is, accordingly, no clear or specific finding made by the district judge that Mr Smith, by any of his actions on either of the two occasions, crossed the line to which I referred earlier between, on the one hand, merely reporting the position which his employer intended to adopt and, on the other hand, giving effect to that position by himself giving directions to officers of the Agency which obstructed the exercise of their powers.

52 As in the case of Ms Millmore, it is possible to conceive that some of the primary facts found by the district judge might have justified him in making findings to that effect. But, as I have emphasised, before a person is to be found guilty of a criminal offence there needs to be a specific finding that he has committed an offence by a specific act or omission. I can find nothing in the findings made by the district judge in relation to Mr Smith which satisfies that test.

53 In his case, therefore, as in the case of Ms Millmore, I would, subject to my Lord's view, allow this appeal and quash their convictions. In relation to the other three appellants, I would, for the reasons given, dismiss their appeals.

54 MR JUSTICE HOLGATE: I agree.

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This transcript has been approved by the Judge.