



Neutral Citation Number: [2024] EWHC 1397 (Admin)

Case No: AC-2023-BHM-000072

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
BIRMINGHAM DISTRICT REGISTRY

Date: Friday 7th June 2024

In the matter of an application for Judicial Review

Before :

Mr Justice Ritchie

Between :

THE KING
(On the application of)

ANDREW LOGIE

Claimant

-and-

THE CROWN COURT AT BIRMINGHAM

Defendant

-and-

BIRMINGHAM CITY COUNCIL

Interested Party

The Claimant was in person, assisted by a lay representative, Mr Robert Campbell-Lloyd.

Ryan Hodgins of counsel (instructed by in house Solicitors) for the **Interested Party**

The Defendant did not appear

Hearing dates: 23rd May 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on [7th June 2024] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Ritchie:

The Parties

1. The Claimant is a Pedlar or street trader. Birmingham City Council (BCC), the Interested Party, is the Council responsible for the street in which the Claimant was selling merchandise.

Bundles

2. For the claim I was provided with a bundle of documents, two authorities bundles and two skeleton arguments.

The conviction in the magistrates Court

3. BCC laid charges against the Claimant relating to three dates on which it was alleged he traded in the street without a licence in contravention of the *Local Government (Miscellaneous Provisions) Act 1982* (the LGA), *Schedule 4, Section 10(1)(b)*. Summonses were issued in the Magistrates Court and led to a trial on 9.5.2022. The Claimant defended on the grounds that he was empowered to sell on the street by his Pedlar's Certificate. The Magistrates found that he was not trading as a Pedlar under the Pedlar's Certificate and convicted him on all three dates of street trading without a licence. He was fined £300 per offence.

Appeal to the Crown Court

4. At the hearing of the appeal to the Crown Court, on 2.12.2022, evidence was heard from 5 BCC witnesses: Janice Morrison, Sarah Hemsell, Shahid Ali, Radinger Kang, and read from Esther Kempson. The Claimant gave evidence in his defence. In summary the transcript shows that the evidence was as follows.
5. On the **17th December 2020** the Claimant was selling merchandise on the High Street in Birmingham. He had a mobile trolley with 4 wheels, a flat top and a box underneath. It was not large. He was displaying novelty lights, masks and children's toys. He was noted in Janet Morrison's evidence (based on CCTV videos and her own notes) as trading in position one for 3 minutes then moving to position two and staying for 26 minutes (14.48 - 15.14pm). Another BCC witness, Mr Kang, recalled the position two trading as occurring for 30 minutes starting at around 3.30-3.35pm (he was led on this answer). This was conflicting evidence. The Claimant says he was having lunch during the time at position two. His Honour Judge Henderson and two Magistrates (together referred to herein as the Judge), found he was street trading, not just having lunch.
6. On **18th December 2020** the Claimant was again in the High Street and was challenged by street trading officials from BCC whilst setting up his trolley in heavy rain. A dispute about his right to trade ensued. Within a few minutes he had walked his mobile trolley away. There was no evidence he made any trades.

7. **On 22nd December 2020** the Claimant was again selling merchandise from his trolley in the High Street and was firstly seen outside Primark at 10.51am then later seen outside a Gym at 11.26am. The evidence from the BCC witnesses, Mr Kang and Ms Kempson, was that he had moved over the course of those 35 minutes.

The decision under review

8. The Crown Court trial did not get off to a good start. The prosecutor raised a new point of law, relying on a decision of Mitting J. in *Jones v Bath* [2012] EWHC 1359 (Admin), about the Claimant travelling to the High Street by vehicle or train which, it was submitted, would knock out the appeal altogether because, to be a pedlar, he had to travel without a horse between towns under S.3 of the *Pedlars Act*. The Judge initially accepted this submission. Halfway through the day, after lunch, the Claimant, who was a litigant in person, put before the Court another authority, the case of *Sample v Hulme* [1956] 3 AER 447, in which Lord Goddard CJ., Hilbery and Ashworth JJ. ruled that travel from town to town by vehicle was within s.3 of the *Pedlars Act 1871* and did not prevent the trader from being a Pedlar. So, BCC withdrew the alleged knock out point and the Judge withdrew the tentative ruling.
9. The Claimant's appeal was dismissed in the Crown Court. The Judge summarised the remaining issue and the Court's ruling on the law thus:

“The issue in this case is whether he comes within the exception in the sense that he was truly to be described as acting as a pedlar under the authority of a pedlar's certificate. The authorities that relate to this, in particular the case of *Jones v Bath City Council*, I think it is, in which Mr Justice Mitting put it in this way, "Being a pedlar requires a person to be both peripatetic and ambulatory." Concretely, that means somebody who is transporting themselves during the process and ambulatory as that case, and the other authorities which are consistent on the point, confirm. This needs to be a small-scale and mobile undertaking.”

10. The Judge made the following findings of fact:

“On each occasion, the defendant was using a mobile stall. It had four wheels, at least some of them with a kickdown brake to keep it still. The defendant in fact agrees most of the alleged facts. First of all, in relation to 17 December, the CCTV stills that we have seen, and he confirms, show first of all that he's in one position for at least three minutes or so from 2.45 to 2.48 pm. He then moves his stall, if that is what we call it, for a distance of something like 30 yards or so, and it is in one position between 14:48 and 15:14; 26 minutes. The defendant says he was eating his lunch during that time, which may well be, but we know perfectly well you can eat your lunch

whilst standing behind the counter. He does not agree the assertion that he was in one place near Primark between 3.30 and 3.55 on 22 December. On 18 December, his stall was set up. There was a brief interaction between him and the authorities. It was raining. As I say, he had just set up. It was there, on his account, for something like ten minutes. On 22 December, we accept that he was set up for 35 minutes.”

11. These findings are a bit jumbled up but when put in chronology mean that the Judge found that the Appellant had:
- On 17.12.2020 set up his trolley for 3 minutes in one spot, then 26 minutes in another.
 - On 18.12.2020 he was setting his trolley up and disputing his right to do so with BCC staff for a maximum of 10 minutes.
 - On 22.12.2020, he was in the street, set up for 35 minutes.

12. Applying the law to the facts the Judge ruled as follows:

“He has given us a document which is the basis of his assertion that there is some kind of informal 15 to 20-minute rule that allows someone to remain in one place and to remain within the pedlars' exemption, if I can put it that way. We do not know the source of that document. It is plainly not a legal authority. It has some kind of discussion but has no authority so far as we are concerned, and it is central to his case. It simply does not reflect our view of the law. There is no such informal 15 to 20-minute rule. It may be that people sometimes do not enforce it, in the way that people do not enforce speed limits when people travel a couple of miles an hour over the limit, but it does not mean they are not breaking the speed limit. So, as I say, it has no formal value as far as we are concerned. But quite apart from that, the scale of what he was doing and his being in a fixed position for significant lengths of time take him outside the exception for pedlars, and he was a street trader and is, therefore, guilty of these offences and we dismiss the appeals.”

The appeal by way of case stated

13. The Claimant appealed by way of case stated and the Judge refused the application.

The judicial review

14. The Claimant issued the judicial review claim on 2.3.2023. Permission was granted by Eyre J. on 26.10.2023.

15. The Claimant has dyslexia and asked for Robert Campbell-Lloyd to speak for him. I permitted that application without a medical certificate because he did appear, in Court, to have difficulty reading and speaking with clarity and because his lay representative had displayed, in writing, considerable grasp of how the Claimant wished to put his case and was not being paid for the work. In addition, BCC did not object. I rejected the Claimant's application to admit in evidence an expert report from Robert Campbell-Lloyd for the reasons set out in an extempore judgment given in open Court. In summary, whilst he has considerable expertise in pedlary, he is not a qualified lawyer and sought to argue points of law on statutory interpretation using a range of case law he had gathered over the years. But he also wished to represent the Claimant, so was not an independent expert under CPR Part 35. I allowed him to speak for the Claimant and I permitted him to make his points in submissions but not in evidence.

The Issues

16. There are three main issues in this judicial review. The first is, the proper interpretation of S.3 of the *Pedlars Act 1871*. The second is whether the Claimant was trading as a Pedlar within his Certificate at the times and on the dates set out above. There is also an issue about whether some of the findings of fact made by the Judge were irrational or made unlawfully because they were made without evidential foundation.

The Claimant's Grounds of Claim

17. The Claimant's initial grounds of claim, for which permission for judicial review was granted by Eyre J. on 26.10.2023, were to the effect that he had not been permitted to argue his case in law and that he was, at all relevant times, acting as a Pedlar under the *Pedlars Act* when properly interpreted. A few weeks before the hearing he clarified his grounds somewhat and I granted permission for that. Although the clarified grounds set out 7 separate points, in effect he was saying the same thing in different ways. I set the Amended Grounds out below in full:

“1 The Summons charges were confusing and misleading on the grounds that the term street trading is not exclusive to the LG(MP)A Schedule 4 – Street Trading but covers also the lawful street trading activity of pedlary. Both street trading pedlary and Schedule 4 street trading are defined textually similar in the *Pedlars Act* and the LG(MP)A.

2 The Summons charge infers that the only authority permissible in Schedule 4 designated streets is a local authority issued licence or consent. The Summons charge ignores the fact that another authorisation exists outside of Schedule 4 licences and consents and regardless of Schedule 4 designations of streets. A *Pedlars Certificate* authorises a person to act as a pedlar throughout any part of the United Kingdom and is issued by police on behalf of the Crown. There is specific exemption from the whole of Schedule 4 for a person acting as a pedlar under the 1871 *Pedlars Act*.

3 I was prevented in Court from discussing interpretation and application of law beginning with the primary legislation the Pedlars Act and secondary legislation the LG(MP)A Schedule 4 but the prosecution was granted permission to outline three authorities each citing a stated but unproven definition of pedlary from *Watson v Malloy* 1988.

4 I was not given an opportunity to read my arguments into court that indicate the numerous anomalies in interpretation and application of law and was told that such matters would be discussed at the end but were not. As a litigant in person at the hearing, handicapped by severe dyslexia and difficulty with reading I was unable to defend myself competently.

5 I believed that I was entitled to judgment of the facts under primary and secondary legislation but the facts were judged entirely from within the context of a Schedule 4 offence of illegal street trading on the grounds of a definition from what I regarded to be unreliable case law *Watson v Malloy*. The judge said that the Court was bound by it and any attack on that legal ruling has to go to a higher Court.

6 I believe that the judge prejudiced the hearing on several occasions as evidenced early in the transcript by firstly proposing a difficulty he presumed I would have about how I travelled to Birmingham, then been rebuked on the facts and then been told it was not an issue in this case; secondly because I was not granted an opportunity to read my prepared arguments in to the court record concerning interpretation and application of primary legislation before hearing what I considered dubious case law, and thirdly that the facts as provided by the witnesses would only be considered under the anomalous definition of pedlary cited in *Watson v Malloy* that I consider undermines and circumvents the Pedlars Act.

7 I believe that the hearing was unfair, prejudiced against pedlary, wrong in law, and procedurally inept.”

The Interested Party’s Grounds of Resistance

18. BCC submitted that the decision of the Crown Court was unassailable in law. In his admirably concise Grounds of Resistance Mr Hodgins submitted that the Judge identified the right issues: whether the Claimant was acting as a Pedlar within the *Pedlars Act 1871*. BCC relied on the Crown Court’s findings of fact and submitted that the Court had applied the law correctly to the facts.

The applicable Law

19. The *Pedlars Act 1871* at S.3 states that:

“The term "**pedlar**" means any hawker, pedlar, petty chapman, "Pedlar", tinker, caster of metals, ~~mender of chairs~~, or other person

who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, ~~or selling or offering for sale his skill in handicraft~~” (My emboldening and crossings out).

20. I shall use the term “Pedlar” as a person trading within the S.3 definition whether or not that person has a certificate to do so. I shall use the term “street trader”, as a person who is trading on a public street. This will cover Pedlars and also persons who trade on the street but who are not Pedlars whether or not they have a Local Authority licence. I shall use the term licensed street trader, as one licensed by the Local Authority. I shall use that phrase interchangeably with fixed stall holder.
21. The current *Oxford English Dictionary* defines the following words, by reference to historical usage, thus:
 “Hawker”: “A person who goes from place to place selling goods, or who cries them in the street. In modern use technically distinguished from pedlar: see quot. 1895.”
 “Tinker”: “A person who makes a living by mending pots and other metal household utensils, esp. on an itinerant basis. Now chiefly historical.”
 “Petty Chapman”: “A man whose business is buying and selling; a merchant, trader, dealer. Obsolete or archaic.”
22. The system for gaining a certificate to be a Pedlar is set out in the *1871 Act*. The Chief of Police of the local area grants Certificates at a low price. 17 years later, as the railways (iron horses if you will) expanded across the United Kingdom, the *Pedlars Act of 1888* made such certificates valid nationwide.
23. Much later legislation, the *Provision of Services Regulations 2009*, removed both chair mending and selling or offering for sale skills in handicraft, from the definition of “Pedlars” thus:

“Street trading

- 45.—(1) In section 3 of the Pedlars Act 1871(1) (interpretation)—
- (a) the words “mender of chairs” are omitted;
 - (b) the words “or selling or offering for sale his skill in handicraft” are omitted.”

For this reason I have struck through those words from S.3 of the *Pedlars Act* above.

24. Schedule 4 of *the LGA* creates the offence of street trading without a licence, as follows:
 “10.—(1) A person who-
 (a) engages in street trading in a prohibited street; or

- (b) engages in street trading in a licence street or a consent street without being authorised to do so under this Schedule; or
- (c) contravenes any of the principal terms of a street trading licence; or
- or
- (d) being authorised by a street trading consent to trade in a consent street, trades in that street-
 - (i) from a stationary van, cart, barrow or other vehicle; or
 - (ii) from a portable stall, without first having been granted permission to do so under paragraph 7(8) above; or
- (e) contravenes a condition imposed under paragraph 7(9) above, shall be guilty of an offence.”

25. Schedule 4 of *the LGA*, carves out statutory protection for Pedlars from committing a S.10 offence, as follows:

“(2) The following are not street trading for the purposes of this Schedule- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;”

So, it is apparent that, to be or not to be acting as a Pedlar, within the definition in S.3 of the *Pedlars Act 1871*, is crucial to determining criminal liability for street traders with no Local Authority licence.

Case Law on the interpretation of S.3 of the Pedlars Act 1871

26. The definition in S.3 of the *Pedlars Act 1871* has caused uncertainty for Local Authorities and Pedlars for decades. This case is a classic example. If construed too narrowly, Pedlars cannot sell their merchandise and are moved on as soon as they set up, or are prosecuted and, if convicted, lose their right to be granted Certificates to be Pedlars due to the requirement to be of good character. If construed too widely, Local Authorities may find their High Streets choked up with Pedlars, accompanied by bags, carts, mobile stalls and barrows, positioned willy nilly on the public highways and pavements, blocking shoppers and competing with licensed stallholders, who no doubt resent the Pedlars competing with their trade at a much lower official cost for the Certificates than the stall holders have paid for their Local Authority licences.
27. I shall review the following ten cases helpfully provided by the Claimant's representative and supplemented by BCC's counsel. I shall refer to them by the names in brackets:

- *Sample v Hulme* [1956] 3 All E.R. 447, (*Sample*);

- *Watson v Molloy* [1988] 1 WLR 1026, (*Watson*);
- *Manchester v Taylor* [1989] transcript, unreported, (*Taylor*);
- *Normand v Alexander* [1994] SLT 274, (*Alexander*);
- *Shepway v Vincent* [1994] 29.3.1994, transcript unreported, (*Vincent*);
- *Tunbridge Wells v Dunn* [1996] 95 LGR 775, (*Dunn*);
- *Stevenage Borough Council v Wright* [1996] 2nd April, transcript unreported, (*Wright*);
- *Chichester v Wood* [1997] 14 March transcript, (*Wood*);
- *South Tyneside v Jackson* [1997] EWHC Admin. 149 (*Jackson*);
- *Jones v Bath* [2012] EWHC 1359 Admin. (*Jones*).

Sample – **travelling by van then selling on foot**

28. Mr Sample and two other men were salesmen for a firm, who travelled by van from town to town and then went house to house, on foot, selling merchandise (blankets and carpets). They were charged with an offence under S.4 of the *Pedlars Act 1871* of acting as Pedlars without a certificate. Mr Sample asserted he had no case to answer, he was not a Pedlar because he had travelled by van to the town and so was not selling on foot. They were all convicted. They appealed by case stated. On appeal Lord Goddard CJ, Hilbery and Ashworth JJ. dismissed the appeals. Lord Goddard ruled as follows:

“The question was whether they were acting as pedlars and, with all respect to the strenuous argument of counsel for the appellants, I should not have thought there was the smallest doubt about it. The Pedlars Act, 1871, S. 3 provides: ... As the word “or” is disjunctive, the section reads in this way: “without any horse ... travels and trades on foot and goes ... to other men’s houses carrying or exposing goods for sale”. It seems to me that it is impossible to say that because a man arrives at a fixed point and there leaves his vehicle and proceeds to walk through the town, it may be for a mile or it may be for six miles, he is not travelling on foot. He is going from house to house and he is travelling from house to house. The word “travelling” cannot be used here as meaning travelling by train or travelling from one town to another. The man travels on foot as soon as he has left his car or his van or a house.”

29. I take from this decision firstly, that the operative actions upon which the *Pedlars Act 1871* attaches, are those involved in the immediate lead up to the attempts to sell, the sales or exposure for sale, and the actions straight after the sale/s. In *Sample* the appellant was walking and trading. He was found to be acting as a Pedlar within S.3 and so was guilty of the offence because he had no certificate. The earlier driving between towns by van did not undermine the selling on foot being part of acting as a Pedlar.

Watson – **selling wrapping paper from a stand all day long**

30. Mr Molloy and Ms Oldrey were both, separately, selling Christmas wrapping paper, each from a stationary position during all or a large part of the day, in Plymouth. They had portable metal stands and they travelled by car around the West country during the year. Mr Molloy sold sunglasses in the summer, he did not have a Pedlar's certificate, Ms Oldrey did have one. They were each prosecuted for street trading without a Local Authority licence. They were acquitted by the Magistrates. The prosecution had alleged that trading from a stationary position during a large part of the day was inconsistent with section 3 of the Pedlars Act. It was asserted that being static was not consistent with acting as a Pedlar, there being no travel or mobility. The defendants submitted that, although peddling was peripatetic in nature, it did not require constant movement to different positions in one town. To interpret the Act in that way would be importing into the Act a requirement which was not there. All that was required, in the defendants' submission, was travelling from town to town. The Magistrates accepted that defence. The prosecution appealed by case stated. On appeal, before Woolf LJ. and Hutchison J. the appeals were allowed, therefore, the defendants were convicted. The reasoning in Hutchison J.'s judgment was as follows.

“The point in this appeal which gives rise to general interest, and on which we are told it is regarded as a test case, is whether on the facts found by the justices it was open to them to hold that Mr Malloy was acting as a pedlar.” (1030 H).

...

“Mr Hockman submits that the words of the section recognised the clear distinction between a pedlar in the classic sense, and someone who sets up his stall for a day and cannot realistically be described as travelling and trading on foot.” (1031 F).

...

“Turning to the definition in the Pedlars Act 1871, Mr Griggs submitted that there were five elements in the section: that he should be without a horse or beast bearing or drawing burden; that he should travel; that he should trade on foot; that he should either go from town to town or to other men's houses; and that he should carry or expose for sale goods etc. Taking each of these individually, he was able to argue that Mr Malloy filled the bill. He had no horse; he travelled; he traded on foot; he went from town to town; and he exposed goods for sale. The fallacy, as it seems to me, in this piecemeal approach is that it entirely disregards (i) the overall purport of the definition and (ii) the vital conjunctive “and” between travels and trades. The definition in Section 3, so far from extending or varying, in my view entirely conforms with the ordinary conception of the meaning of the term pedlar; as one would expect with a definition which includes as part of the meaning the very word sought to be defined. The popular conception of a pedlar is

someone who goes around selling things or services who sells on the move: he is an itinerant seller. **If the distinction is to be encapsulated in an aphorism, one might say that a pedlar is one who trades as he travels as distinct from one who merely travels to trade. I do not mean that he must not stop.** As Woolf LJ. suggested during the argument, the chair mender stops in order to mend chairs: but the feature which makes him a pedlar is that he goes from place to place, mending a chair here and a chair there: he comes to the owners of the distressed chairs, rather than setting up his pitch and allowing them to come to him.” (1032 D-G).

...

“I can deal very shortly with the case of Miss Oldrey, where the position is, if anything, plainer her statement ... records that she normally works from 9:00 to 4:00, and when in Plymouth sells goods from a stall in the same position. She plainly is not a pedlar.” (1033 A). (My emboldening).

31. So, in *Watson*, the ratio of the decision introduced a temporal test for how long a person may remain static whilst street selling, combined with a movement test, for the actions of the trader whilst trading. To be a Pedlar, the trader must not be stationary in the High Street all day. He/she is required to move from place to place during the day. Movement from town to town is also necessary, presumably during the course of the duration of the annual Certificate, but that is not enough to bring the trader within the Act. The required movement is to be done whilst trading or between trading, during the working day, not whilst he/she is travelling between towns. The ruling was clear, that a Pedlar cannot work all day in one spot on the Local Authority’s street. He and she must move and trade during trading hours. So far, so good, but the question arises, how often must the Pedlar move to be able to remain a Pedlar rather than fall into the different category of a fixed stall holder who needs a licence from the Local Authority?

***Taylor* – selling glove puppets from 2 bags and stopping for 15 minutes to trade**

32. In *Taylor* HHJ Proctor was hearing an appeal from the Magistrates Court. The defendant had been selling hand puppets to customers, outside Marks and Spencers in a shopping precinct in Salford. He had two bags by his side on the ground. He made a few sales and was then approached by a police officer who asserted he was street trading illegally without a licence. He produced his Pedlar’s Certificate which was valid. Mr Taylor refused to move. Had he not been challenged he would have continued to “work his way through the shopping centre”. He had traded thus all over the country, travelling by car between towns. He was convicted by the Magistrates. The judge, sitting with Magistrates on appeal, considered both *Sample* and *Watson*. The appellant admitted that he had stopped for 10 to 15 minutes and put his bags down, but submitted that, by their ruling, the Magistrates had disqualified him from being a Pedlar just by doing so. The judge upheld the appeal and acquitted Mr Taylor. Unfortunately, there is no full transcript of the ruling before me, it ends after the summary of the submissions.

33. I glean from this incomplete transcript that a Pedlar may put his bags down to advertise and effect trades so long as that stationary period is part of his overall onwards movement through the precinct to effect his trades during the working day. Thus, the movement test was confirmed but qualified by the right to stop from time to time. A third consideration may have been introduced as well, namely that the Pedlar may have carrying equipment with him. The first two tests: temporality and movement were applied. A 15 minute stationary period for advertising the merchandise was clearly acceptable as consistent with being a Pedlar. Two bags were permitted.

Alexander

34. The Magistrates acquitted Ian Alexander of trading without a licence in Argyle Street, Glasgow on two dates in October 1991. The prosecution appealed. Alexander was seen to trundle a stall on wheels to the site. He then stood there and exposed various articles for sale in the course of each day. He stood at that stall at or about the same place. The appeal Court held that he positioned himself in the public place waiting for customers to come to him, rather than moving around from place to place seeking his customers. He did not have a street trader's licence but did have a pedlar's certificate which was in force during the relevant dates. In the High Court of Judiciary, The Lord Justice General (Hope), Lords Cowie and Mayfield ruled (page 274) that:

“As we said earlier in this opinion, the essence of the activity which is the subject of the charge in this case was that of placing a stall to which customers were invited to come, rather than moving from place to place to find customers in order to sell to them. This seems to us to be a clear case of street *277 trading to which the exception does not apply, The respondent was not carrying on any activity in respect of which the pedlar's certificate had been granted to him, because he was not acting as a pedlar at the time. It does appear that there may be some overlap between the two provisions. It is not inconceivable that a person may be a pedlar one day and a street trader another. But this does not mean that, when he is properly to be regarded as a street trader, he is exempted from the need to have a street trader's licence. As we have said, the question must always be whether the particular activity being carried on at the particular time falls within the definition of the expression “pedlar” and is therefore sufficiently covered by the pedlar's certificate.”

This decision confirms again that staying static in one place all day is clearly not acting as a Pedlar.

Vincent

35. I regret to say that I cannot find the transcript of this case online and neither party put it before me.

***Dunn* – selling balloons on foot and stopping for up to 20 minutes at a time to trade**

36. In *Dunn*, Leggatt LJ. and Sir Ian Glidewell dealt with an appeal by way of case stated from the Tunbridge Wells Magistrates Court. The Magistrates had acquitted Mr Dunn on 8 charges relating to different dates on which it had been alleged he had been street trading without a licence. The facts were that Mr Dunn held a Pedlar's Certificate and on each occasion had offered balloons for sale for a period of up to 20 minutes stationary in places. The Magistrates found that Mr Dunn did not trade from a fixed position but instead moved up and down Calverley Road in the course of selling and offering to sell his balloons. He did not have any articles on the ground around him. He occasionally traded in other parts of Tunbridge Wells. He also travelled around the country doing the same. He did stop and wait for members of the public to approach him to buy his balloons from time to time. On appeal it was accepted that there was no allegation that he stayed stationary for more than 20 minutes at any one time, but he did stay stationary for up to 20 minutes to expose his goods for sale. Leggatt LJ gave judgment. The Court considered *Watson*, but no other cases were cited. I set out the relevant paragraphs below.

“Mr Straker next submitted (and this was the burden of all his submissions) that the Respondent had to be travelling if he were to be acting as a pedlar. **He acknowledged that whilst doing so he had to be able to stop for the purpose of selling his balloons from time to time, but the suggestion appeared to be that because he was not in something not far short of perpetual motion he could not claim to have been a pedlar at the material times.** This, Mr Straker asserted (and we have no reason to doubt him), was a pedestrian precinct. Therefore, he argued, activities of this kind, were they to be permitted in this area, might occur in the concourse of a railway station. **For my part I was quite unable to understand how that submission assuming it to be correct, could advance the Council's case on this appeal.**”
(Page 4).

“It seems to me that we must go by the definition of “pedlar” as we find it in the Pedlars Act 1871. After identifying various descriptions of persons selling on a small scale as individuals, the section then describes what it is they have in common. They are persons who, so far as material for present purposes, travel and trade on foot and go from town to town carrying to sell or exposing for sale any goods. I have already remarked that that aptly describes what it was that Mr Dunn was doing on the occasions that were the subject of the charges brought against him. It seems to me that the approach of the magistrates was in

every respect correct. They applied the right test for determining whether the Respondent was a pedlar and in a model case stated they made findings of fact that render untouchable their decision to acquit the Respondent. The question which they asked at the end of the case for the opinion of this court is: “whether on the facts found we were entitled to conclude that the respondent was acting under the authority of his pedlar's certificate, and therefore had a defence under... of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 to the offences alleged?” to that question I unhesitatingly answer yes.” (Page 5).

37. I draw from this judgment that a Pedlar, when trading on a Local Authority street, may stop for 20 minutes to display his/her merchandise, because that is a necessary part of his daily trading whilst meandering around that road or that Town. The point here, it seems to me, is that a Pedlar is not a fixed position trader. He is not licensed to trade from a fixed position. One can see good reason for that. Local Authorities decide where the fixed stalls will best be placed. There may be many good reasons for making such decisions. Encouraging markets for fresh local goods; creating community spirit; keeping markets and stalls out of the way on main thoroughfares so as not to obstruct pedestrians and many more. So, fixed position trading is not what Pedlars, who are unregulated, can do. But the question still remains: what is the extent of the temporal test for being a Pedlar whilst trading? When does a Pedlar fall foul of becoming too similar to a fixed position trader? Clearly depending on the equipment, 20 minutes being stationary advertising merchandise, at least in the circumstances of what Mr Dunn was doing is permissible. But what is the upper temporal limit? In a perfect world this would involve evidence of all the types of licence granted by the Local Authority to understand what was being licensed and for how long temporally each day. Do they grant only 8 hour licences, or 4 hours, or two? It would also involve consideration of how much more money licensed street traders can make from their large fixed stalls compared to the humble Pedlar, on foot with his bags or trolleys. The answer is always: money, but what is the correct question? In this case the question had three factors by the time *Dunn* was decided: a temporal test, a movement test and an equipment test.

Wright – **selling wrapping paper with a bag for an hour at one place**

38. The month after Leggatt LJ and Sir Iain Glidewell decided *Dunn* they heard the appeal in *Wright*. Monty Wright was acquitted by the Magistrates Court of two charges of street trading in December 1994. He was selling Christmas wrapping paper. He had a valid Pedlar's Certificate. The Magistrates found that he was stationary for at least an hour at the entrance to Westgate Arcade with a large shopping bag at his feet, a sign on the bag and he was calling out to passers-by to attract their attention. He was approached by the police and Local Authority officials who considered he was not entitled to trade in the way that he did, despite having a Certificate to be a Pedlar. The Divisional Court considered *Watson* and ruled as follows (there are no paragraph numbers in the judgment):

“The questions which Mr Bird says are to be answered in a case such at this are:

- (i) What is the nature of the trading practice of the seller, and
- (ii) what is the nature of his 'conduct whilst he is stationary for the purpose of the selling?'

To answer those questions one must consider the length of time for which the person concerned is in one place and what he does whilst he is in that place. For my part, I do not derive much direct assistance from aphorisms about travelling to trade. Mr Bird attempts one such when he says that “it was the trade in this case that was passing, not the trader”. Neat though the aphorism may be, it does not directly assist the court in its appraisal of the seller's conduct. It is, however, a fact, which Mr Bird emphasised, that the Respondent in this case did remain stationary for a significant period of time. He submits that had the Justices asked themselves the simple question whether whilst conducting these activities the Respondent was acting as a pedlar, they would not have misled themselves. Mr Bird has submitted that the scope of the exemption from street trading is governed by the conjunctive “and” between “travels” and “trade”. That echoes the submission in *Watson*. “Travels and trades” is, of course, part of the definition of a “pedlar”. That is not a consideration that I find compelling. **The only significance of the words is that to be a pedlar a person must travel as well as trade, but he does not have to do them both simultaneously.** As was pointed out in *Watson's case*, the chair mender obviously has to pause to mend a chair or chairs. When Hutchison J described him as one who sells on the move, he obviously did not mean that he has to be in motion whilst he is effecting sales. He meant, as the judge said himself, that a pedlar is an itinerant selling, or, as Mr Bird has put it, “he is peripatetic”. Essentially a pedlar, acting as such, is travelling when he is not trading. **So the length is important of those periods during which he is stationary and not selling but is prepared to do so. The use of a stall or stand may indicate an intention to remain in one place or in a succession of different places for longer than is necessary to effect a particular sale or sales.** I believe the existence of a stall in *Watson's case* to have been material but it does not follow that it was indispensable. **Even the presence of goods at the seller's feet, whether in a container or not, may suggest that the person concerned is taking up or staking out a pitch, although it must not be forgotten that the statutory definition of a**

pedlar includes a person who goes from town to town “exposing for sale any goods”.

The Magistrates justified their decision that the Respondent was a pedlar by saying that they “found it material that the Respondent was not trading from a stall and that he was entitled to stop to trade”. **The fact that he was not trading from a stall did not of itself mean that he was acting as a pedlar, and though he was entitled to stop to trade that was only so in the sense of pausing for the purpose of effecting individual sales.** The pith of the case against the Respondent was contained in paragraph 2.3 of the Case Stated, where the Magistrates said that:

“During the period the Respondent was stationary, for as least an hour, at the entrance to Westgate Arcade. Whilst in this position [he] was selling wrapping paper from a large shopping bag which was at his feet.”

They mentioned that the bag had a sign on its side. No doubt that was for the purpose of advertising his wares. They mentioned also that he called out to passers-by to attract their attention, that is to say, to urge them to come to him rather than being content to go to them himself. The summary of that evidence is that the Respondent had, in effect, established the pitch where he remained for at least an hour. As Hutchison J put it in *Watson's case* at page 1030C:

“The picture is, as this finding of the justices established, of a man conducting his business from one position, rather than of someone carrying and selling goods as he moves around.”

The same feature was identified by the Lord Justice General in *Normand v Alexander* [1994] SLT 274 when he said at page 276D:

“This does appear then to be a case where he positioned himself in the public place waiting for customers to come to him, rather than moving around from place to place seeking his customers.”

The Lord Justice General summarised the position in that case at page 276L by saying:

“The correct approach is to examine the nature of the activity which is being carried on, at the time and in the place to which the charge relates. The question must then be, when looking at that activity, whether it is an activity which can be described as falling within the term 'pedlar', or whether it is an activity which falls outside that expression and thus requires a street trader's licence. **As we said earlier in this opinion, the essence of the**

activity which is the subject of the charge in this case was that of placing a stall to which customers were invited to come, rather than moving from place to place to find customers in order to sell to them.”

An example of the latter type was to be found in the case which was decided by the present constitution of this court on 19th March 1996, *Tunbridge Wells Borough Council v Dunn*. It suffices to say that in that case the Magistrates found that the Respondent was not trading from a fixed position. He moved up and down the road in the course of selling and offering for sale his balloons. At no time did he have a stand whilst he was selling or exposing the balloons for sale, and he did not have any articles on the ground around him. That was an example of a Respondent who walked up and down whilst selling his wares. In those circumstances we concluded that the Respondent had been acting as a pedlar and, the Justices having acquitted him, we dismissed the local authority's appeal against that decision by way of Case Stated.

In my judgment the Respondent in the present case was not walking around to sell but for a considerable period of time was selling from a pitch to which he exhorted passers-by to come. On 10th December 1994 he was not, on the occasion charged, acting as a pedlar and is therefore not entitled to the benefit of the exemption from street trading.” (My emboldening).

39. From this decision I can say with some confidence that the twin tests of temporality and movement were becoming standardised when considering whether street trading was within S.3. A Pedlar is not required to be in constant motion. He is allowed to stop and sell his merchandise with some small equipment. But, standing for an hour in a fixed spot selling his merchandise was held to be fixed street trading, not being a Pedlar. So, Monty Wright failed the temporality test and the movement test. One can now see that, depending on the circumstances, staying in a fixed position for an hour is outside the definition of being a Pedlar. Part of the emerging reasoning for this is the nature of being a Pedlar. The need to go to customers, not stay static in a fixed position (like a shop or market stall) and wait for customers to come to the stall.

***Jackson* – selling music cassettes from a wheeled, 4ft square, 2ft 6 inches high table/cart – short movements**

40. In February 1997, Kennedy and Mance LJJ. heard an appeal by case stated from an acquittal of Jackson (a club entertainer) who had been selling his own music cassettes in the street using quite a substantial piece of equipment. It had a seat, wheels, a keyboard and a table top on which he displayed his cassettes and a box underneath to store merchandise. He did so for 3 hours in Kings Street South Shields. He moved every 10 minutes or so by getting up and pushing the cart 3-4 steps and sitting down

again. He travelled around in a van and kept his stores in the van. The Court considered: *Watson; Normand; Vincent; Dunn; Wright* and allowed the appeal. He was convicted. Kennedy LJ gave the judgment:

“6. Analysis of Magistrates' Conclusions

In the present case the justices, having carefully considered Watson v Malloy , found it to be distinguishable "in that this respondent did not sell from a static position". It is only right to point out that the justices were not referred to the other authorities which I have cited in the course of this judgment. Had they been so referred it seems to me that they would not have concluded that on either occasion this respondent was acting as a pedlar as defined by section 3 of the 1871 Act. **True it is that he did not sell from a static position in that at fairly frequent intervals he moved his unit (which many people might describe as a sort of street barrow or stall). But his purpose in moving was not to move on with his tapes so as to bring them to the attention of other potential customers. It was simply an attempt to take advantage of the statutory defence. From a trading point of view the reality was that on each occasion, for several hours, his stall was set up in King Street,** and by singing and playing he sought to induce passers-by to come to him and buy his tapes. Clearly the respondent carried on his trade in many places other than King Street, South Shields, and the justices were entitled to have regard to that fact, but the same could be said of many a market trader who sells from a stall on market days, and who would certainly not be described as a pedlar.

In the present case the justices also considered, as they put it "the mischief that the street trading legislation was intended to address". That can be a useful approach when a court has to construe an ambiguous word or phrase used in a statute, but it cannot be a valid approach here because of the format of the legislation. Unless the respondent could show that he was a pedlar acting under the authority of a pedlars certificate granted under the 1871 Act he contravened paragraph 10(1)(a) of 1982 Act, because what he was doing was undoubtedly street trading, as defined by that Act. The definition of "pedlar" in the 1871 Act was formulated to indicate when a pedlars certificate would be required, and, except perhaps incidentally, the object of that legislation does not seem to have been "to protect traders who pay the costs associated with running a permanent shop from unfair competition from street traders whose overheads would necessarily be substantially less". Furthermore, because of the way in which the statutes inter-act it would not be possible for a

defendant to take advantage of the statutory defence only so long as he sold goods not offered by shops in the vicinity where he was operating. **As I have tried to indicate, when deciding whether a defendant is or is not a pedlar a court has to look at what he is and how he behaves.** The nature of his merchandise is largely irrelevant, and it is wholly irrelevant whether or not that merchandise is being sold by others with permanent premises nearby.”

41. This ruling does not further expand upon the 3 tests identified so far: temporal, movement and equipment. It excludes one potential test about the nature of the merchandise. It does seek to clarify the nature of the movement test, by setting out that movement, which is clearly no more than worthless movement, does not satisfy the movement test.

Wood – selling flowers from a hand pushed cart

42. In 1997, Brooke LJ. and Blofeld J. presided over an appeal by way of case stated from Chichester Magistrates who acquitted Mr Wood of street trading. He had a barrow on wheels with a canopy containing buckets of flowers. He hand pushed the barrow. He was challenged and asserted he was trading as a Pedlar. He traded for 3/4 of an hour at a number of different positions in North Street and then on East Street. The following cases were cited: *Watson; Wright; Shepway*; and *Westminster Council v Al Elmasoglu* (unreported) 14.2.1996. On appeal he was convicted. Brooke LJ gave the judgment:

“The next case that we were referred to was the Westminster City Council v Al Elmasoglu (unreported) 14 February 1996. The facts of this case related to the sale of hot dogs from a barrow which was moved from time to time. There the learned Stipendiary Magistrate's opinion was cited by Forbes J. in his judgment at page 6. The relevant part reads:

“I (Stipendiary Magistrate) was of the opinion

(a) although the appellant moved his barrow every few minutes this did not of itself bring this within the definition of a pedlar acting under the authority of a pedlar's certificate;

(b) the appellant did not stop his barrow to serve customers who asked for his wares; he stopped and then waited for customers to come to him whilst he was stationary in this place.”

The learned judge then, having rehearsed the facts, came to the conclusion that the Magistrate's conclusions could not be faulted. She asked herself the right questions and she came to the conclusions on the facts which were entirely reasonable.”

...

“finally the appellant cited the case of *Shepway District Council v James Vincent*, 29 March 1994. This was a case involving the sale of balloons at Christmas items with the use of a trolley. Laws J., in his judgment at page five said:

“in my judgment, while it is plain not only that the pedlar must be a pedestrian but also that the goods which he sells must be in essence small goods, there is nothing in the definition given in Section 3, nor in my view in the ordinary view of the term “pedlar”, to exclude a person who has some small means of assisting the transport of his goods, such as the trolley in the present case. Of course it is possible to conjure instances where someone travels from place to place using a much larger piece of equipment for the carriage of his goods. Where any such instance arises it will be a matter of fact for the magistrates to decide whether the whole apparatus is of such a scale as to take the respondent in question out of the definition of the term “pedlar”.”

Brooke LJ, then considered the judgment of Kennedy LJ in *Jackson* and summarised the correct approach as follows:

“From these authorities, a number of matters appear to be reasonably clear:

1. Each case depends on its own facts.
2. A pedlar goes to his customers rather than allowing them to come to him.
3. A pedlar trades as he travels rather than travels to trade.
4. A pedlar is a pedestrian.
5. If a pedlar is a seller, rather than a mender, he sells reasonably small goods.
6. He is entitled to have some small means of assisting his transport of goods, such as a trolley.
7. It is necessary to consider his whole apparatus of trading and decide if it is of such scale to take the person concerned out of the definition of “pedlar”.
8. The use of a stall, or stand, or barrow, may indicate an intention to remain in one place or in a succession of different places for longer than is necessary to effect the particular sale or sales indicating that he is a street trader not a pedlar.
9. If he sets up a stall or barrow and waits for people to approach him, rather than approaching them, that is an indication that he is a street trader not a pedlar.” (Page 6)

43. Brooke LJ.'s 9 features to consider when interpreting S.3 of the *Pedlars Act 1871* are instructive. The temporal test is included in them at factor 9 and is in step with the previous judgments of Leggatt LJ. but avoids setting any fixed time limits. In relation to the movement test, clarification is given that the movement should be towards customers, to gain trade and this is to be contrasted with movements just to create a defence, as in *Jackson*. Other pre-requisites from Section 3 are laid out, so it is necessary for the Pedlar to be on foot. An equipment test is explained: the Pedlar may have smallish equipment like a trolley, or a bag, to assist him to move and carry and display his merchandise. If the equipment is a stall, stand or barrow it may be so large that it tends away from being a Pedlar towards being a static street trader.
44. Thus, in my judgment, the proper interpretation of S.3 of the *Pedlars Act 1871* is to be approached on the authorities in the following way. To qualify to be a Pedlar under the Act, whilst trading in a Local Authority regulated street, the trader:
- (1) must have travelled from town to town by horse, car, van or train or other means during the course of the year of his Pedlar's Certificate;
 - (2) must be a person who is trading on foot;
 - (3) must not be trading from a horse, car, van or other mechanised vehicle;
 - (4) will be carrying or exposing for sale merchandise, goods or wares or procuring orders for immediate delivery;
 - (5) may be using bags, a trolley or moveable equipment which he moves by hand and which is not so large as to appear to be like a fixed stall or barrow.
 - (6) may stop for periods of time to attract the potential customers in the close vicinity. He/she may stay static for around 20 minutes but not so long as an hour (*see more below) before moving on to another area to attract different customers. That other area may be the same street or another street, but such movement must be real in the sense that the trader is reaching other customers, not just the same customers a few yards or metres away;
 - (7) having identified these factors the Court should stand back and look at all of the circumstances of the case to determine whether the trader was acting as a mobile Pedlar or a fixed street trader.

* All these authorities leave unsaid whether a Pedlar may stay static for a time between 20 minutes and an hour. Just analysing the stationary periods for what they do to the trader's trading, in an 8 hour working day, moving once every 20 minutes would involve 24 changes of position. Moving once every half hour would involve 16 changes of position. Moving once an hour would involve 8 changes. Each change involves packing up, walking, stopping and setting up again. All this loses trade but is part of what a Pedlar does. In my judgment, taking the case law into account, moving between 16 and 24 times per 8 hour shift is sufficient to satisfy the "travels whilst he/she trades" requirement in the majority of cases. So, in my judgment, a usual stopping time of around 20 minutes and a maximum approaching but not at much as 30 minutes is a reasonable, usual temporal limit, depending on the type and size of equipment being used.

Jones – **selling umbrellas at a fixed spot, with a large bag, for 55 minutes**

45. There is one final case which should be recited here. Firstly, because it was cited to the Judge in the Crown Court and relied upon by the Judge. Secondly, because the summary of the law provided to the Judge was provided without reference to the other previous case law on the proper interpretation of the *Pedlars Act 1871*, or was not mentioned by the Judge, and so should not be followed in my judgment. In early December 2009, Mr Jones was standing outside Currys in Union Street, Bath, selling umbrellas for 55 minutes. He had a Pedlar's Certificate. He was convicted of street trading without a licence in the Magistrates Court. In appeal, Mitting J. referred to various cases and decided that the burden of proof lay on the Defendant to make out his defence of being a Pedlar. He went on to rule, with a substantial caveat, that because Mr Jones had travelled to Bath by car, that fact disqualified him from being a Pedlar. I regret to say that I respectfully do not agree with that ruling. In addition, he ruled that trading for 55 minutes and later for 17 minutes in a fixed location was not trading as a Pedlar. He was not shown the authorities set out above and in particular *Dunn* which dealt with the 20 minute static selling permission set out above.

“13 Neither Miss Yeuthman or Mr Fuller had contemplated the second question which I raised and addressed it on their feet. I have not therefore had the benefit of mature consideration or research into authorities. **I do not intend to rest my decision on the conclusion that I am about to express and it may be that further research would show that my conclusion is unsound.** But absent any authority to the contrary, it seems to me that the definition of pedlar in section 3 of the 1871 Act requires that the pedlar is both peripatetic and ambulatory. In the 19th century, a trader who arrived in a town with a horse and cart carrying a significant quantity of goods for sale would not have been within the statutory definition because he would have travelled with a horse or other beast bearing or drawing burden. In modern times the horse is to be replaced by a motor vehicle, typically a small van or a car. Although in none of the authorities to which I have been referred has this issue been addressed and in some of them it has appeared that the trader has travelled to the town where his activities were scrutinised by motor vehicle, **I have no doubt that as a matter of construction, horse or other beast bearing or drawing burden should now be read as motor van or car. In modern times someone who drives with his goods in his own van or car to a town or city to offer goods for sale, is not acting as a pedlar.** He is not acting as a pedlar because he is not travelling there on foot. The requirement that he conducts his activities on foot applies both to travel and trade.

14 On the admitted facts in this case, the appellant arrived in Bath with a car full of umbrellas for sale. That fact alone, in my view, put him outside the definition of pedlar. Lest that conclusion be too stark I turn to the way in which the case was presented to me in skeleton arguments and dealt with by the justices. On the justices' finding of fact, which they were clearly entitled to make, the appellant sold umbrellas from a place at which he stood without moving for two successive periods of 55 minutes and 17 minutes. **No assistance can be derived from earlier cases in which different periods have been scrutinised.** The simple question on the facts of this case is, whether or not on those proven facts, the justices were entitled to find that the appellant was not trading as a pedlar. Ultimately, that question is one of fact and judgment. Thus asked there can be only one answer to the question, which is that the justices were entitled to find that the appellant had not established a statutory exception. Accordingly, even if my construction of the exception is erroneous, I am satisfied that the justices were entitled to find as they did that the answer to the question posed by the case: "Whether on all the evidence that was before us we correctly decided that the appellant was, on 8 December 2009, not acting as a pedlar in accordance with the authority of this claimant's certificate granted under the Pedlars Act 1871 " is, yes, the justices were entitled so to find. For those reasons this appeal is dismissed." (My emboldening).

46. It is unfortunate that the only case cited to the Judge in the Crown Court in the case before me was *Jones*. It was for that reason that the Judge was misled into initially considering that the Claimant in the case before me was not a Pedlar because he had possibly driven to Birmingham. Fortunately, at lunch time on the first day, the Claimant found and provided *Sample* to the Judge and corrected the misapprehension.

Judicial Review

47. A claim for judicial review may be brought to the High Court from a decision of an inferior Court. No point was taken by BCC that this Court had no jurisdiction to hear the claim.
48. In summary the grounds upon which a claim for judicial review may be allowed are: (1) unlawfulness of the decision below; (2) procedural impropriety and (3) irrationality. Judicial review is a discretionary remedy.

Applying the law to the facts

49. The factual findings made by the Judge are not wholly correct in my judgment. Taking each charge date in turn. On **17.12.2020**, the finding was that the Claimant was in one

position for 26 minutes. The evidence of Morrison and Kang was contradictory about when that started. However, there was sufficient evidence to make the findings that the Judge did. In my judgment it cannot be said that no reasonable Judge could have made that finding. On the charge relating to **18.12.2020**, the Judge found that the Claimant was at or just setting his stall up in the rain, he was challenged, he spoke to the officials and a dispute over his entitlement arose and then he went off. That took 10 minutes. No finding was made that he was trading during that 10 minutes. The evidence was that he moved away when challenged. On **22.12.2020**, the Judge found that the Claimant was “set up” for 35 minutes. No finding was made about where he was setup. The evidence from the BCC witnesses, which matched that from the Claimant, was that he had moved from Primark to the Gym during that 35 minutes. So, he was not in one place for 35 minutes. Google maps shows these two buildings are on opposite sides of the High Street. The Claimant’s evidence was that he moved every 15-20 minutes and used a timer to do so and this was not controverted.

50. In my judgment the finding that the Appellant was trading for 35 minutes on one fixed spot on 22.12.2020 was one which no reasonable judge could have made on the evidence. I replace that with a finding that over the 35 minutes the Appellant traded in two separate spots for 15-20 minutes in each spot.
51. In relation to the law, the Judge only relied on one authority in the judgment. That was the decision of Mitting J. in *Jones v Bath*. As set out above the ruling in that case, which constituted the ratio decidendi, related to travel between towns. The prior, more senior case: *Sample v Hulme*, was not cited to Mitting J. In my judgment Mitting J. fell into error on that point and I respectfully do not agree with his conclusion. BCC, which opened the appeal relying on *Jones*, then abandoned the point at the Crown Court hearing when the Appellant raised *Sample*. It was not pursued before me either. When coming to the rest of Mitting J.’s ruling, on the interpretation of S.3 of the *Peddars Act 1871*, on which the Crown Court Judge relied, Mitting J. made it subject to an express caveat. He had received no citation of previous case law on the various tests for the interpretation of S.3. So, he did not have before him: *Watson; Taylor; Dunn; Wood; Wright; or Jackson*. In my judgment it was insufficient for BCC to put *Jones* before the Judge instead of the many properly argued authorities set out above. It led the Judge into a dark alley, without the light of previous authorities.
52. The Judge held that there was no 15-20 minute rule. In my judgment that was an error of law. As set out above, at para. 44, to qualify to be a Pedlar under the Act, whilst trading in a Local Authority regulated street the trader: must be on foot; must not be trading from a horse, car, van or other mechanised vehicle; must have travelled from town to town during the course of the year of his Pedlar’s Certificate; must be carrying or exposing for sale merchandise, goods or wares or procuring orders for immediate delivery; may be using bags or a trolley or moveable equipment which he moves by hand and which is not so large as to appear to be like a fixed stall or barrow; may stop for periods of time to attract the potential customers in the close vicinity for around 20

minutes safely. However, taking all of the case law into account, and the necessity for Pedlars to move towards customers regularly, in my judgment he may not stop for as much as half an hour before moving on to another area to attract different customers. So, for instance, in my judgment, that other area may be the same street or another street, but such movement must be real in the sense that the trader is reaching other customers, not just the same customers a few yards or metres away. If other side of the street is sunnier and has more customers, he may cross the street to be nearer to them.

53. Taking each of those factors in turn. The Claimant, Mr Logie, was on foot. He was not trading from a horse, car or van. He had travelled from town to town during the currency of his Pedlar's Certificate. He was carrying and exposing for sale his merchandise and procuring orders for immediate delivery. Looking at the equipment test: he had a small mobile table with 4 wheels which was easily moveable by hand. It was not akin to a stall or fixed market structure. On 17.12.2020 he stopped for two periods which amounted to 3 minutes, then 26 minutes. On 18.12.2020 he was setting up in the rain, challenged, entered a dispute and then moved on after 10 minutes. On 22.12.2020 he stopped for two periods of 15-20 minutes in different positions. Standing back, I do not consider that there was any evidence that the Claimant was moving irrelevant distances simply to form a defence. He moved from one site on the street to another, from outside Primark to outside a Gym. I now look at all of the circumstances of the case to determine whether the Claimant was acting as a mobile Pedlar or a fixed street trader. The Claimant had some understanding of the law in a rough but fair way. He generally moved on every 15-20 minutes to seek new customers. He had an egg timer which reminded him to do so. This, it seems to me, undermines the case which BCC were trying to prove. He was unfixed, mobile and moved on regularly. Criminality, in my judgment, should not be determined by margins of a few minutes. On those factors, in law, in my judgment, the Claimant was acting as a Pedlar on all of the dates, including the 26 minutes spell (although he was cutting it finely at that length). In addition, if a Pedlar with a Certificate is challenged by Local Authority officers or Police officers, the time spent producing the Pedlar's Certificate and discussing his or her right to trade should not, in my judgment, be held against the Pedlar for the purposes of the criminal charges.
54. Furthermore, the conviction for the events of 18 December 2020 was clearly wrong in law. The Claimant had only just set up when the BCC staff approached him and he soon went off, frustrated by the interaction which lasted 10 minutes.

Analysis of each Ground

55. **Grounds 1 and 2: the Summons charges were confusing.** This ground is not made out. It was based on a misunderstanding. Summonses do not set out potential defences. They state the charges to be proved. It was for the Claimant to make good his defence.

56. **Grounds 3-5:** For the reasons set out above I consider that *Watson v Molloy* was not wrong, it was a staging post decision along the way, in which the Courts have determined various sensible tests for interpreting the scope of S.3 of the *Pedlars Act 1871*. I also consider that, to an extent, the Claimant was not given a full opportunity to develop his arguments in the Crown Court. It appears to me likely that he did not put before the Court and more crucially, neither did the BCC's barrister, the relevant previous authorities. Thus, in my judgment, the Judge fell into error over the correct interpretation of S.3 of the *Pedlars Act 1871*. It was interpreted too narrowly. In addition, one of the Judge's decisions on the facts in relation to the length of time the Claimant was trading on the streets for 35 minutes overlooked material factual evidence that he moved position which made it such that no reasonable Judge would have made that finding. I have explained which decision was irrational above. I consider that the Claimant was acting as a Pedlar with his trolley, as he displayed his goods for sale for 10 or 20 or 26 minutes on the three dates involved, as he moved from site to site and was trading as a Pedlar.

Grounds 6 and 7

57. These overlap with Grounds 3-5. In my judgment these Grounds were made out. The Claimant was not given a full opportunity to develop his arguments. The previous relevant case law was not provided to the Judge and this led to errors in the interpretation of S.3 of the *Pedlars Act 1871*.

Conclusions

58. My analysis of the relevant factors is at paras. 44 and 53 above. I consider that the Claimant was acting and trading as a Pedlar. For these reasons I quash the convictions of the Claimant. On all three occasions he was peddling his merchandise legally within his Pedlar's Certificate.

END