PETITIONER'S FULL SUBMISSION from Agent RC-L

Reading Borough Council Bill & Leeds City Council Bill - 3 November 2011

My Lords & Lady Knight

The promoters submit two Bills. Firstly, to confer powers on Reading Borough Council for the better control of street trading and touting in the borough of Reading and a second bill to confer the same powers on Leeds City Council with no touting clause.

And that the Bills are promoted by each Council. The preambles recite that;

i) The borough and city are districts under the management and local government of each Council

ii) Certain powers relating to street trading in the borough and city are exercisable by the council under the Local Government (Miscellaneous Provisions) Act 1982 (c. 30) and for their better enforcement it is expedient to amend that Act in its application to Reading and Leeds and supplement those powers:

iii) It is expedient to make better provision with respect to touting in the borough only of Reading.

As a forward to this submission I will give a brief summary of the adoptive LGMP Act referred to in the preamble and also the national statute the Pedlars Act that the bills affect followed by what differentiates the words **street trader** as a **licensed street trader** and a **pedlar** as a **street trader**.

The promoters for the bills have now made their submissions and rather than enter into a point by point response I will submit the case on behalf of the petitioners that these bills go against fundamental principles that they consider constitutes fair and proportionate law making.

Firstly, the bills refer to the

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT

In 1982 this adoptive national Act, that I shall refer to as the LGMPA, was introduced for local councils to licence and regulate approved static pitches on designated streets. Approval is required from the Highways Department for static obstacles to be erected on the highway because such obstacles cause a liability for the Council.

The **criteria** for application for a licence is that the applicant be above 17, has a residential address and be approved by council officers.

The **restrictions** include where the trade may occur, what time of the day the licence operates, what days of the week and what articles may be sold together with any other controls that the council attaches to a licence.

These **control measures** ensure public safety from liability caused by stalls, barrows and wagons allowable under the terms of the licence and I am sure you have seen for yourselves just how large and cumbersome they are.

Within the LGMPA there are **exemptions** exhibit 1 from council control for 9 particular street trading activities beginning with "acting as a pedlar". I will go into the significance of "acting as a pedlar" later in my submission.

The primary **purpose** of static trading legislation is to prohibit unauthorised trading and obstruction.

Principle

We can therefore summarise the **Principle** of the LG(MP) Act as - to provide local criminal law control of licensed static trading pitches with specific exemption for, amongst other street trading activities, that of pedlary.

That Principle, though well intentioned did not right the failings of a particular loophole established when licensing for **hawkers** was abolished in 1966. The LGMPA in 1982 intended to plug that hole but failed. Unlicensed hawkers with large trolleys and carts

equal to that of licensed street traders had no lawful authority to obstruct the highway and were prosecuted for the offence of obstruction until they somewhat deviously obtained a lawful authority in a Pedlars Certificate claiming rightly that the term pedlar includes hawker by description contained in the Pedlars Act.

This gives us a brief background to consider why councils seek greater powers to control this problem and I hope that the promoters will agree that this constitutes the **main identifiable problem** in regard to the issue of street trading and pedlary. It is consistent with the justification brought forward by the promoters of the first of this type of private bill in the City of Westminster where, and I quote from their own Report "*a number of illegal street traders including sellers of hot dogs have* ***obtained pedlars certificates to try and avoid prosecution for illegal trading****"*.

……..

I would now like the committee to hear, why the petitioners have chosen the profession of pedlary, and, what in fact is the pedlars legislation known as the **Pedlars Act**.

PEDLARS ACT exhibit 2

The **Pedlars Act** contains various descriptions attributed to the term pedlar and were many and varied when drafted in 1697, revised in 1871 and continue evolving even today. The historic language and descriptions so derided by the promoters should not concern this committee because the meaning of the term pedlar includes in the description the words "**or other person**" which in today's language means what it says "or other person". Such a description allows potential for many other descriptions of a pedlar but none of those descriptions should be taken by the committee to be a "definition" – merely possible descriptions.

The **criteria** for application for a Pedlars Certificate is similar to that for a street trader in that the applicant be above 17. Further requirements include to have a minimum one

month residential address, be of good character and in good faith intend to carry on the trade of a pedlar.

The **restrictions** on the trading activity are that the person travels and trades carrying goods as a pedestrian whilst selling or exposing any goods for sale.

The **purpose** of the Pedlars Act can be found in Section 13 exhibit 3 to differentiate genuine authorised traders from other undesirables operating in the streets.

Principle

We can therefore encapsulate in today's language the **Principle** of the **Pedlars Act** as –

to provide common law privilege to any eligible pedestrian person to trade with complete freedom based on purely individual decisions.

It is this principle that attracted your petitioners to this profession and I use the word "profession" purposefully for not only do your petitioners self-regulate and in good faith carry on the trade of a pedlar but their itinerant activities constitute a **regulated profession** within the nomenclature of European Directives and I shall come to the European Directives later in my submission when addressing the recent Report of the Secretary of State for Business Innovation and Skills on the bills before the House today.

The Principle of pedlary has enjoyed unhindered continuity for 314 years and has given rise to such iconic names as Marks & Spencer; Duncan Bannatyne from Drangon's Den, and, your own Lord Sugar of the Apprentice. Each career was begun by peddling on the street and in these deliberations, that directly affect such people, we must have some sense of what can actually be achieved from such humble beginnings.

…….

There is an interplay between these guiding principles of the LGMPA and the Pedlars Act and that interplay has a profound effect on how each is interpreted and then applied in the bills. There is a

DIFFERENCE BETWEEN STREET TRADING AND PEDLARY

Your petitioners would like the committee to be very clear about what distinguishes a **street trader** from a **pedlar** because these bills seem to confuse and mix generic language with legal terminology such that the two concepts are blurred into one and this could not be further from the law, nor the truth. It has also been an issue raised by your petitioners in the consultation process between stakeholders and government and much correspondence is publicly available on-line at the pedlars.info website but I shall summarise what distinguishes them from each other: It can be said that…

- A pedlar is a **travelling trader** as distinct from a static trader
- A pedlar is **certified** whereas a static trader is **licensed**
- A certificate entitles the trader to **move about** whilst trading
- A licence to trade in the street has a **limit on the place** to trade
- A certificate does not limit the goods that may be traded
- Both Certified and licensed traders may **sell or expose for sale goods and articles**
- **Acting as a pedlar** provides exemption from licensed trading regimes
- Pedlars not only trade at houses but may trade **any place** **exhibit 4**
- Pedlars trading place to place may also trade **between places**
- Pedlars may trade **in the street**
- Pedlars provide **competition** for consumer choice

And finally

- door-to-door sellers do not require a certificate nor a licence and are therefore **neither** a pedlar nor a street trader.

…….

This has been a brief but essential introduction and I shall now move into the petitions.

(3) Your petitioners contend that the bills go against the principle of both the LGMPA and the Pedlars Act and therefore petition against the whole of each Bill now proposed. They contend that the Bills are being bulldozed forward as expedient but show no signs of being fair public policy in the general interest and instead, in every clause, show signs of seeking to victimise pedlars through increased burden. The **potential victim status** will be addressed later in the submission.

As a contingent possibility that the committee determines the bills should proceed with alleviation of some of the many burdens then your petitioners will propose amendments at the conclusion of this submission.

…….

These private bills have lineage that require some background to understand where and why they have come into existence. I intend submitting a very short summary of your petitioners understanding and context of

PRIVATE ACTS

Your petitioners are aware of other private bills and Acts that began in 1996. The City of Westminster determined to promote a **Private Bill** to replace existing street trading legislation (Part III of the London Local Authorities Act 1990 exhibit 5, amended 1994 exhibit 6, and modelled on the LGMPA). The grounds for bringing forward a private bill were that *"some of the provisions of the LLAA were ambiguous and difficult to interpret"*. The Council Report (dated 13 November 1996 cl 4.2 (b)) exhibit 7 goes on to state *"bona fide pedlars have never caused a problem in Westminster but in recent years a number of hot dog sellers have obtained pedlars certificates to try to avoid prosecution"*.

The original draft of the City of Westminster Bill included exemptions for several trades as per the LLAA but specifically made no mention and especially **no exemption** for the trade of pedlary.

By July 1998 a Report from the Secretary of State for the Home Office on the City of Westminster Bill rejected the omission of an exemption for pedlary ***on the grounds of Principle*** causing conflict between national and local legislation and ***that any decision to change the way pedlars are regulated should be taken as a matter of national policy. The Secretary of State does not consider that it is appropriate to deal with controls on pedlars through ad hoc changes brought about through local legislation.*** ***exhibit 8, 8a***
In response to the government report the promoters agents Sharpe Pritchard replied that ***the removal of the pedlars exemption would have, in practice, no detrimental effect on genuine pedlars***. *Exhibit 9*
In a further Memorandum from the promoters agents addressing the distinct grounds of objection raised by the Secretary of State they admit *"2. **The problem appears to be restricted to pedlars who are acting as unlicensed street traders**"*. *Exhibit 10*

Pedlars were never considered stakeholders and never consulted on the effect of the City of Westminster Bill and contend that the original intention of the promoters of these private bills was to disenfranchise pedlary by granting no exemption from prosecution. When that failed and the promoters were obliged to include an exemption for pedlary, the argument supporting their case shifted from *"**a number of hotdog sellers have obtained a pedlars certificate to try to avoid prosecution**"* to a different problem generalising the facts to *"**pedlars were acting as unlicensed street traders**"*.
Your petitioners contend that the result was a cleverly drafted draconian bill that circumvented a national statute through the mechanism of an amended local act to attack pedlary and achieve the original objectives of removing pedlar's civil rights exemption from the Street Trading Regime.

Several copy cat bills have found their way into statute but they all rely on textually amending the Pedlars Act by altering the lawfully acceptable activities of a pedlar through a local Act. In Second Reading in your House Lord Bilston, in moving that the

bills be read a second time, introduced them as *all dealing in the main with one general issue – that of street trading*… and whilst declaring his APPG and LGA partisanship led the House to the *main area of contention being pedlars*- in this way he confused pedlary and street trading, and your petitioners consider this was intentional. Indeed your Lord Lucas most recently spoke in Second Reading on these bills (19 October 2010 col 771 3.25pm) that "*I do not think that the Private Bill process was ever designed to be a substitute for public legislation in this way… to restrict the right of people [pedlars] to make a living by selling out in the open*".

In recent times we have heard much debate and media frenzie about the **blurring between private and public.**

Your petitioners contend that the bill/s before this committee affect **public policy** in that:

- they attempt to outlaw a statutory civil right through codified criminal law;
- they propose to amend a public Act, namely the description and allowable activity of the trade of a pedlar through the mechanism of an adoptive local bill;
- the magnitude of the geographical area affected leaves no place where a genuine pedlar may trade because councils can and have already extended designations to the whole jurisdiction eg in Reading; exhibit 11
- the multiplicity of the interests involved is not limited to the petitioners but every person above the age of 17 and given the fact that there are some 68 million people in the UK these bills have an effect on the rights of about 48 million eligible persons;
- the bills, though partly of a private nature have, as their main object, a public matter in their effect.

Your petitioners contend that such mischief of blurring a PRIVATE bill with a PUBLIC bill should never have been permitted by the Speaker at Second Reading. Pedlars have written to the Speaker to that effect.

The floor of your own House has heard of the inappropriateness of using the private bill process as a substitute for public legislation. Lord Lucas 19 Oct 2010 c771 3.25pm but procedurally, I am informed that the petitioners must accept that we have moved past the

point at which this committee can correct what your petitioners consider is an abuse of parliamentary process by those who can afford such privilege. The blurring between private interest and the public interest persists and affects deliberations on whether or not these bills are in the general interest or something more sinister.

…….

My Lords and Lady Knight, this has been some very condensed but essential background to these petitions and whereas during the last round of Select Committee Hearings on the Bournemouth Borough Council and the Manchester City Council bills I was asked by the chair how long my submission would take, I requested 5 days to present full scrutiny of all the evidence but was thrown into an on the spot turmoil of been allowed just 2 hours. With this in mind you will appreciate that all I have to say is very condensed and I am happy to expand on any of the issues that you find unclear.

(4) Your petitioner against the **Reading Borough Council** bill is Mr. Andrew Douglas Carter, who lives in Yatton Keynell, Wiltshire. Your petitioner is a holder of a pedlar's certificate and has held one for 14 years. He, under the authority of such a certificate granted by statute (Pedlars Acts 1871 and 1881), practices his trade of pedlary throughout much of the southern half of the United Kingdom, including the Borough of Reading.

Your petitioner against the **Leeds City Council** bill is Mr. Tony Furnivalis, who lives in Manchester. Your petitioner is a holder of a pedlar's certificate and has held one for eight years. He also acts under the authority of a certificate granted by statute (Pedlars Acts 1871 and 1881). He acts as a pedlar throughout much of the United Kingdom, including the City of Leeds

…….

(5) Your petitioners contend that their rights, interest and property are injuriously affected by these Bills and further contend that they have no alternative other than to petition against the Bills for reasons amongst others that I shall now submit.

……

(6) Your petitioners, when **acting as a pedlar** under the authority of a valid pedlar's certificate, rely on a lawful exemption from Street Trading Regulation under the Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 which states *"trading by a person **acting as a pedlar**…is not street trading for the purposes of this Schedule"*.

As I said earlier the LGMPA provides legislation for local authorities to licence and regulate static street traders with ten sections and some one hundred and ninety subsections and the Act makes reference to pedlars in one section only to state that *"**acting as a pedlar** is not street trading"* full stop.

Your petitioners contend that the purpose of the LGMPA was not intended to regulate pedlars because the Pedlars Act does that adequately with 27 sections and 38 subsections and if the actions of a pedlar are to be modified then the Pedlars Act is a more appropriate place than the LGMPA unless there is a hidden purpose to alter an alleged civil offence to an alleged criminal offence. The promoters have not declared this intention but it has been found in fact to be the effect on genuine pedlars. Evidence has been brought before the committee of this effect on others who are qualified to speak as genuine pedlars and know the effect and heavy burden of that hidden purpose.

I have already submitted but it is worth repeating that the principle of the Pedlars Act is: **to provide common law privilege to any eligible pedestrian person to trade with complete freedom based on purely individual decisions** within any part of the United Kingdom**.**

Any offence under the Pedlars Act has civil consequences such as an endorsement on the certificate, deprivation of certificate and for those not carrying a valid certificate a financial penalty or imprisonment, so the penalties are very severe for *not acting as a pedlar*. Since the introduction of the LGMPA those trading without certificate or licence are rightly caught by that Act.

The difficulty for your petitioners lies in local authorities tactical change from correctly issuing a Summons for an alleged civil offence under the Pedlars Act – that is, **not acting as a pedlar**, to issuing a Summons for an alleged criminal offence under these new forms of legislation – that is, **acting without a licence**.
Whereas the burden of proof previously lay with prosecution proving beyond reasonable doubt that the certified trader was not acting as a pedlar, what now occurs, and has been shown, is that a pedlar invariably has to prove that the activity was not that of an unlicensed street trader. When councils take a pedlar to Court they usually have skilled barrister advocates and so with a lay pedlar rarely winning in a Magistrates Court, probable success is only found in a Crown or High Court but with considerable financial burden for legal representation. This reversal of the burden of proof has not been tested and therefore remains a **matter of public importance.**

Your petitioners contend that the bills create anomalies because of confusion and misuse of language especially the use of the words 'street trader' and 'street trading' in the LGMPA such that the promoters seem to intentionally confuse pedlary with street trading to catch the activities of pedlars regardless of their exemption. More careful scrutiny finds that genuine pedlars are not static 'Street Traders' in the formal sense of local authority licensing but are mobile '**traders in the street**' or **travelling traders** and it goes without saying that in common parlance both are traders in the street or street traders but without capitals S & T a fact that is all too often overlooked.

…….

(7) The promoters have previously submitted in other places that pedlars are free to operate anywhere outside designated streets, arguing 'wide margin of discretion' under the

Human Rights Act

for ‘limited control’ but those arguments fail closer scrutiny because all streets in the Reading borough are designated and Leeds maybe see exhibit 11 and depending on interpretation of this bill your petitioners may be prohibited from all streets in the jurisdiction and it is their contention that such is the disproportionate and unreasonable effect of the bills. Your petitioners contend that prohibition is unlawful and does not meet the criteria of “limited control” under the **Human Rights Act**.

Human Rights infringement on pedlary have been a recurring issue with these private bills and your petitioners at exhibit 11a draw the committees attention to SO 98A HL in which the minister states *save in respect of the restriction on pedlars’ activities read*. Mounting evidence shows that Human Rights continue to be infringed.

Scrutiny of these bills reveals a Private Business Standing Order report see exhibit 12 on the compatibility of these proposals with the European Convention on Human Rights. That report signed by Lord Young is based on a non-scrutinised and therefore unjustified “belief” *that the promoters have undertaken a full assessment of the compatibility and he sees no reason to dispute their conclusions that the bill is compatible*. He admits to *not having seen the evidence upon which the promoters rely on to establish that the proposed restriction on certified pedlars’ activities is in the public interest* but *understands that the matter was considered by the Unopposed Bill Committee in the Commons*.

That committee sat on 15 January 2010 and heard a 5 paragraph uninterrupted monologue from Mr Lewis of Sharpe Pritchard for the promoters and there was no scrutiny, not even a single question from the committee. Your petitioners were not aware nor consulted in November 2007 that the bills were introduced into the other House but had they been given the opportunity as they are today then they would have opposed the bills on the same grounds that they submit today, namely that the promoters submission to the Unopposed Bill Committee lacked any careful consideration and awaits scrutiny.

At point 84. on the Unopposed Bill Committee, the promoters admit the bills engage Article 1Protocol 1 Protection of Property of the Convention because a Pedlars Certificate constitutes a “possession” .

Your petitioners are aware from recent case law of a 6 point justification test to determine if an interference with possessions is in the **general interest** or not. They have also found that every single condition must be met:

1 The Scope Test asks: Does the complaint refer to an interference with his possessions?

Your petitioners say - **potentially**

2 The interference test asks: Is there an interference?

They say - **potentially**

3 The lawfulness test asks: Is the interference provided for by law?

They say Yes, but only by way of the bills

4 The general interest test asks: Does the interference pursue the general interest?

They say - **No**, it is a local interference with a national civil right

5 The fair balance test asks: Does the interference strike a fair balance with the right to peaceful enjoyment of possessions?

They say - **No**, the interference amounts to "prohibition" of a national civil right.

6 The proportionality test asks: Is the interference proportionate to the legitimate aim?

They say - **No**, the aim is to resolve a perceived problem of the misuse of a pedlars certificate by traders who do not act as a **genuine pedlar** and there are less restrictive measures available to achieve this aim.

Your petitioners contend that they have a **legitimate expectation** to be entitled to operate under the Pedlars Act 1881 exhibit 4 within any part of the UK but they find that the bills introduce the notion of **potential victim status** if they should attempt to trade on any street in Reading or Leeds. They accept that States may have a wide margin of appreciation of what constitutes the general interest but States don't have such a margin if the interference is *manifestly without reasonable foundation* and your petitioners contend that the bills are exclusively of local interest, not in the general interest but having profound negative effect on all of the population of the UK. For them, the bills seem to prohibit their economic interest in Reading and Leeds to the benefit of other economic interests such as street traders. The promoters submit that the control is **limited** because

the petitioners can still be door-to-door sellers but for this they would not require a certificate and the Council does not have any licensing scheme for private business at the doors of houses. They contend that this is not a **limited control** but in effect a **prohibition** on the activities of a **genuine pedlar.**

Your petitioners contend that this infringement of their Human Rights should be resolved to enable their continued trade throughout Reading and Leeds. Provisions have been made in other private bill jurisdictions to achieve this.

.....

I now come to the matter of Paper 148:

From the outset of these private bills the term **genuine pedlar** has been specifically referred to as if it means something different to the word **pedlar** and your petitioners respectfully refer to another report from this House

Paper 148 **exhibit 13**

on 2 similar if not identical bills

Bournemouth Borough and Manchester City Council bills

In which at point 10: your Lords reiterate the Secretary of State's *strong reservations about the use (and your petitioners suggest abuse) of private legislation* as a parliamentary process.

The Lords give direction that, instead of promoters addressing a national statute through private bills, it is for government to address perceived problems in national statute. For pedlars this would be the Pedlars Act, but currently government is considering policy on an adoptive national Act but which many councils have not adopted and so there may be constitutional questions if government intends to force an adoptive Act onto councils who have no desire for them.

In that same point 10 and following directions given to the promoters to make allowance for those pedlars who trade other than by means of visits from house to house, they rightly identify two distinct types of trading. Firstly, that of **trading in the street** that includes both **certified pedlars** and **licensed static traders** and secondly another category altogether, that of **door-to-door sellers** who require neither certificate nor licence because trading at a house or a door is a matter of exclusively private arrangement between the participating parties. Such private business has nothing whatever to do with the likes of these bills and an anomaly before this committee is whether or not it should allow a private bill to impact on what occurs in private arrangements at a dwelling house by provisions in the bills that pedlars must take their trade only on unsuspecting householders.

That paragraph then concludes with the direction that enforcement officers have adequate competence by way of training to ensure that **genuine pedlars** are not prevented from trading. Here again we see the use of the words genuine pedlar as if it means something different to the word pedlar.

In the Report's letter to Lord Harrison from Bournemouth Council exhibit 13a regarding this obligatory undertaking it is clear that Bournemouth Borough Council will only train officers about the LGMPA and the bill, but they will not be trained to understand the Pedlars Act. The letter says that they consider genuine pedlars are only traders who **call door to door** so this indicates that they have failed to understand the difference between trading in the streets and selling door to door and so the undertaking is worthless to genuine pedlars.

In the undertaking from Manchester City council exhibit 13b which also leaves out essential training about the Pedlars Act, it is clear that they consider only un-designated streets to be "preserved opportunities" for pedlars to freely operate but that in designated streets there are no opportunities except as door-to-door sellers. As with Bournemouth this indicates that they too fail to understand the difference between trading in designated or undesignated streets and selling door to door and so again this undertaking is worthless to genuine pedlars.

You petitioners see in these letters the true intent of the promoters to bring about an end to genuine pedlars, by hook or by crook. When pedlars.info wrote of these concerns to Lord Harrison shortly after Paper 148 was published, he replied that the committee had disbandoned and therefore could make no further comment.

We have heard evidence today about different interpretation of these bills by the example in Bournemouth that pedlars entering the town are allowed only to pass through the main street once and not return within 12 hours for fear of seizure. We have also heard that in Manchester there is tolerance for pedlars trading in designated streets.

My Lords and Lady Knight this shows us that the bills have not made it easier to interpret what is allowed by pedlars acting as genuine pedlars, but what it has shown is that the bills are an open opportunity for abuse of genuine pedlars and that letters of undertaking are no guarantee of safeguard to genuine pedlars.

With this I conclude my submission on Paper 148.

…….

(8) Your petitioners are aware of High Court cases where pedlars have been judged as to whether they were **acting as a pedlar** or not, and from these judgments case law has been formulated. In Shepway Borough Council-v-Vincent *"Mr Justice Laws found no provision in the Pedlars Act to exclude a person who has some small means of assisting the transportation of his goods"* and this provides protection for your petitioners means of operation.

Clause 5 of the bills specifically prohibit your petitioners use of any means of support other than carrying goods and in effect prohibits their ability to trade because they trade in small but heavy items. We must remember that they have freedom to trade in "any goods". The removal of their right to use a means of assisting the transporting of

goods, they contend, is unreasonable and disproportionate, favouring strong pedlars and discriminating against weak pedlars. This was noted in the latest report from BIS which I shall come to later.

Your petitioners are aware of the findings on the similar Bournemouth and Manchester bills in the other House where the Select Committee found that the bills, that began with identical text to these bills, should not proceed unless the promoters accepted certain provisions for carrying goods. These were that *"a pedlar's goods or tools of handicraft must be carried on foot on the person or in a trolley with a carrying capacity not exceeding one cubic metre which is pushed or pulled by the person"*. Your petitioners contend that such provision if made in this bill would satisfy their needs and the need for proportionality and fairness whilst at the same time fulfilling the needs of the promoters to limit the size of oversized trolleys in the streets.

I now draw the committees attention to exhibit 14 which provides verbatim text by Counsel for the

Opposed Bill Committee on Bournemouth Borough and Manchester City Council bills

during which the committee accepted that there are pedlars who may trade house to house but that there are also those pedlars who do not only trade house to house with the implicit meaning that they may trade on the street, including designated streets, amongst other places with certain conditions.

Subsequent to that ruling and shown on the right hand side of the same page you will find what textual provisions were enacted. Your petitioners can understand the simple Counsel draft on the left but feel lost in gobbledegook when trying to understand if they can actually operate in Bournemouth or Manchester or whether **potential victim status** will fall upon their every endeavour. This could be found to be unjusticable (not be able to be judged in a Court of Law)

These bills include seizure, confiscation, FPN's that provides an arsenal of intimidating weaponry against the petitioners that was raised in the other House on these bills Third Reading (Chope 14 Jan 2010 col 925) where it was said that *"the whole tenor of these bills is, if not to harass pedlars, certainly to make it abundantly clear that they are not*

welcome in these towns and to move on… the tenor of the bills is rather sinister because everything in them is designed to make life as uncomfortable as possible for pedlars, even when they are not behaving in a manner that is of any concern to anyone and when they are just going about their legitimate business. We should not support legislation that has such an edge to it".

We have heard evidence about two completely different interpretations of these bills by local enforcement officers that have tried to apply the legislation such, that the definition of "location" is applied in Manchester to a particular spot (Brandon Garlic) on the street, and in Bournemouth it is interpreted to mean to the whole of the town centre (Frankie Fernando). Such difficulty with interpretation is evidence of bad law.
Your petitioners amongst others, through ongoing consultation with government have prepared revised text for Clause 5 that provides fair and proportionate amendment for consideration by the committee. I will come to this in conclusion to my submissions.

(9) Clause 5 refers to pedlars.

Your petitioners are quite clear about the meaning of the words 'only by means of visits from house to house' because the original private bill in 1999 was never intended to affect genuine pedlars who have always operated *from town to town* ***or*** *to other men's houses* as per the Pedlars Act and the only difference in the bills is a linguistic need to remove the *town to town* element because the bills are town specific. They regard this with common sense and historical approach to mean that they are free to trade 'only by means of visits from house to house' but not obliged to only trade by this method and can also freely trade in the street as would make sense when '*going town to town or to other men's houses*'. The bills do not state that a pedlar may not trade in a street, designated or not. They are aware that this was the finding of the OBC on Bournemouth & Manchester bills that *"The pedlar trading house to house survives. For those not trading house to house…[certain conditions apply].*

Your petitioners contend that after many years of similar bills coming before Parliament the promoters should no longer rely on very narrow and restrictive construction of the text that the bill attaches to secondary legislation and that it would be more helpful to them if legislation was consistent from town to town and borough to borough. They are aware that government is bringing forward such consistent national legislation as a matter of urgency with draft legislation within 2 months.

I have now made my submission on what your petitioners consider are the most dangerous and harmful clauses that run throughout all of these private bills and if the committee is still unsure that the bills are in the general interest then the next part of this submission may convince you to determine that the bills should proceed no further.

I refer specifically to a sequence of recent government sponsored Reports into

Street Trading and Pedlar Laws

and the derogation of EU law into UK law of the

European Services Directive 2006

in which the word "services" mean "any self-employed economic activity" and which can readily be seen to include street trading and pedlary.

I begin with the Executive Summary of the **Durham Report** commissioned by the department of Business Enterprise and Regulatory Reform, now Business Innovation and Skills in 2009

Exhibit 15, 15a - see highlights and read from original

Following the Durham Report for BIS the same researchers produced a policy paper on Pedlary as an Entry Route to Entrepreneurship

exhibit 15c – read highlights

Next I refer to the Executive Summary of government consultation to formulate policy begun in late 2009 and published in March this year 2011

Exhibit 16, 16a - see highlights and read from original points 1-4

At point 5 the summary refers to the **Services Directive** and I refer you to a summary of that directive on
exhibit 17 read highlights

The Aims of the SD from this short summary are therefore quite clear and raise your petitioners concerns that these bills stand in direct opposition to the guiding principles of the Services Directive.

Your petitioners have studied the Services Directive. Exhibit 18a, 18b are extracts from the preamble of the SD that embolden essential text that your petitioners consider most important
run through them quickly

Following these at exhibit 18 c, d, e, f, & g are the Articles adopted by the Directive with emboldened text that alert your petitioners concerns
run through them quickly

END OF DAY 2 3rd November 2011

FULL SUBMISSION – PART 2 - DAY 3 - 9 November 2011 by R C-L

My Lords and Lady Knight, I would first like to make an apology for presenting my Thesis on how these bills effect Street Trading and Pedlary Law. It was not my intention to bore the committee but only to make clear the many threads that Counsel for the promoters choses to ignore. I am myself only a pedlar but as an administrator of a website dedicated to pedlary I have responsibilities to provide accurate information and meticulous scrutiny.

At the end of our last session I had reached the point of presenting how the bills stand in conflict with the Services Directive and I accept Lord Blair's direction not to read the Articles highlighted in the bundle at exhibits 18a through to 18g and I hope that the committee has now had time to read the 44 questions on exhibit 18h&i arising from BIS policy formulations and the Report from the Secretary of State at exhibits 19a to e. Your petitioner's greatest concerns have been raised by BIS identifying that the LGMPA requires amendment and further that the bills require amendment. We have seen a hastily drafted copy of amendments from the promoters to the bills but there is no indication of the government's amendments to the LGMPA. This clearly makes it difficult for your petitioners to come to a reasonable impact assessment on the promoters amendments.

In conclusion your petitioners submit that the bills are wholly:

- Against the **principles** of free self-determination contained in the **Pedlars Act**;
- That they are against the **principle** of exemption for acting as a pedlar in the **LGMPA**;
- That they are against the **principle** of an open free internal market with unrestricted competition, diversity in consumer choice, social protection and cohesion, the preservation of national historic, social and cultural values relating to human dignity, all as contained in the **Services Directive** Recital 40 and transposed into the **Provision of Services Regulations 2009**;
- Next - That these bills are "Against" the **principles** of spiritual freedom, unrestricted access to economic activity, and equality of rights before the law as contained in the **Human Rights Act.**
- And lastly - That contrary to Counsel for the promoters opinion put in her opening statement, these bills do discriminate between those licensed to trade in the street and those certified to trade in the street. Such discrimination is contrary to, and engages, Article 9 1 (a) of the S D.

Your petitioners contend these bills stand in such powerful opposition to accepted principles that this committee should not allow them to progress any further.

If the committee is minded to allow these bills to proceed, then, with great reservation, your petitioners had already prepared textual amendments to relieve some of the burdens. [at exhibits 21a-c and 22a-b]

Due to the developments that have occurred in the previous 2 days of this Hearing your petitioners have revised the earlier submission on textual amendments and I now submit exhibits 23a-d [go to exhibit 23 Proposed Amendments to the Reading B C Bill to reduce the burden on the Petitioner].

These amendments are essentially the same as earlier but now accommodate what additional elements have been agreed in principle by all sides. They may be seen to be giving too much ground but this is because scale and proportion considerations on previous bills also led to time and distance considerations.
As a template for all the bills we can first consider the Reading bill and turn to Clause 2: "Interpretation"

1. The committee has heard in evidence that genuine small scale pedlars cause no problem and would now be welcome by all promoters as acceptable traders in the streets. Your petitioners are aware of difficulties in interpreting the expression *"house to house"* and ask the promoters to endorse a further **meaning** under Interpretation into the bill – this is entered in red at line 19 – it reads.....
2. The additional qualification at line 23 in red attached to "receptacle" is now consistent with the qualification of "equipment" 5 lines above – it reads.....
However, it is the petitioners' understanding that the word "receptacle" as inserted by the promoters' agents is also to include the unwritten indication that these "receptacles" be enclosed and would therefore limit any goods to only dimensions of less that 0.5 metres. This is unacceptable to the petitioners because it places an unfair burden upon them.
3. The promoters have introduced into the bills the word "services" but without definition. If this is to be clear and consistent with the SD then the definition is here included, again in red text at line 34 - and reads.....
4. One of the difficulties that your petitioners have in practice is that enforcement officers don't know that a pedlar in law also "*sells or exposes goods for sale*" by provisions in the *Pedlars Act* and the *LGMPA*.
The amendment 4 (2) (a) at line 10, also in red, draws an enforcement officer's attention to the lawful right of pedlars to also act in this way but in doing so may claim the exemption for acting as a pedlar in the LGMPA – it reads.....
5. The same follows in subclause (c) at line 15 and it reads.....
6. I think it is fair to conclude from the promoters evidence that there is consensus that pedlars may trade in the street and not **only** at houses as may be interpreted from Clause 5 where it refers to house to house. To clarify this and remove any confusion, subclause (d) at line 16 clarifies that it is regulated traders only that are required to occupy a static pitch allocated by licence or consent – it reads.....
7. The subclause (e) at line 18 makes clear that pedlary and regulated street trading are different – it reads.....

8. The promoters' evidence provides consensus that pedlars do not trade only at houses but are welcome, with appropriate scale and proportion, to trade in the street. This amendment to 5(2A)(a) at line 34 helps to overcome the burden of too literal interpretation in construction – it reads.....

9. The promoters' evidence has led to consensus that scale and proportion would be a suitable 'limited control' on pedlars' apparatus as referenced earlier.

Your petitioners will bring forward evidence that such a limitation to a hand-carried briefcase is practically unworkable but they can accept, the amendment found in the Bournemouth & Manchester model. This is inserted after line 36 – it reads.....

10. The B&M Acts have subsections that provide for time and distance to enable '**limited control**' to ensure that pedlars move about as they trade. Evidence will be provided that the allocation of time (ie 5 minutes before moving on and 12 hrs before returning) and distance (ie 200m before returning) in those previous Acts is unfair and there are less restrictive measures available. They propose the following amendments found on exhibit 23c at subclause (ii)

> (ii) A pedlar may not stop on one "static position" for more than 15 minutes before moving, unless as otherwise allowed by case law and while engaged with trading. [15-20 minutes without condition is a regulation that is unsupportable both as a matter of principle and in law as a matter of evidence]
>
> And at subclause
>
> (iii) The pedlar may thus move on if the previous condition is satisfied and should move, as possible, by at least 20 metres to indicate that he is not a static trader but a mobile, ambulant trader.
>
> And at subclause
>
> (iv) Whilst moving from one fixed position to another he may stop for specific sales and to carry out other allowable activities [this is supported in current statute and by current case law].
>
> And at subclause
>
> (v) He may not return to a static position that he has previously occupied within 1 hour unless satisfying all previous conditions,
>
> The subclause regarding football tickets then follows at
>
> (vi) the trading does not include the trading of tickets

11. The B&M Acts made the provision that a pedlar may not move to a position that is within 50 metres of another pedlar. The Provision of Services Regulation 2009 Section 22 does not permit quantitative distance restrictions between service providers. Eliminating such consideration then fulfils the S D.

12. The B&M Acts made provision that a certificate must be displayed prominently but pedlars in Manchester became worried that the certificate revealed too much private information and the Chief of Police accepted that Section 17 of the Pedlars Act was sufficient – that a pedlar show the certificate on demand.

13. In the promoters evidence from Canterbury, Mr Vick as witnessed made clear that Seizure (Clause 6) introduced the Fear Factor into the bill that is - *under fear of having further seizure,s unlawful traders would not return*. The problem is that this broad-brush approach makes potential victims of all lawful pedlars including your petitioners. This is not fair nor is it a proportional response nor does it meet the S D.

14. Your petitioners reject the FPN clause and rely on the precedent set in the B & M bills at the request of Christopher Chope MP in the other House. To bring consistency to this sort of legislation your petitioners do seek deletion of this clause as per the B&M Acts.

15. Your petitioner on the Reading bill concur with Phillip Davies MP in the other House in Third Reading 14 Jan 2011 col 921 *"that the ticket touting aspect of the bill does not meet the requirements of the S D* .He continues... *I do not see how the House can pass legislation that we know, in our heart of hearts, cannot be maintained, justified and sustained in a court of law. That would be an entirely pointless exercise"*. He goes on to say at col 922 *"I am a member of the Culture, Media & Sport Committee which had an enquiry into the merits of ticket touting only last year. We took huge swathes of evidence from consumers, people involved in the industry and ticket touts themselves – including those who work on street corners and those with websites, as well as the Office of Fair Trading, which has made it clear that it believes that touting acts in the best interests of consumers and it has no reason to try to ban it"*. Your petitioner cannot understand why the promoters would fail to mention to this committee that an anti-competition and anti-consumer clause stands in direct opposition to the principles of the S D.

16. Your petitioner against the Reading bill is concerned that there is no provision in Clause 18 "Powers of Community Support Officers" for any formal CSO training about genuine pedlars who may be subject to opinions and judgments not based on a correct understanding of law. Your petitioner asks to be relieved of such unfair burden.

These then are the petitioners amendments that fulfil what they consider has been achieved by them attending this Hearing as progress towards allowing continued trading. I will now briefly consider the difficulties that the petitioners find in the promoters proposals submitted last week.

****go to scrutiny of promoters amendments****

Scrutiny of Promoters Amendments: 7.11.2011

- Under the S D an Authorisation Scheme cannot exist unless it is justified by **Overriding Reasons Related to the Public Interest**, ORRPI – the test is very strict.

- The committee has heard that BIS contend that the Authorisation Scheme for pedlars, the Pedlars Act, does not meet the ORRPI test for 2 reasons – residency and good character. Government is consulting on repeal of the PA.

- The committee has heard from BIS that government is bound by Parliamentary Protocol to make no comment on Private Business, which these bills are.

- Your petitioners contend that private business is therefore a very powerful instrument.

- BIS can make comment on the adoptive national Local Government (Miscellaneous Provisions) Act, the LGMPA, and they, ie BIS contend that it must be amended to meet the Services Directive.

- BIS has not published draft amendments to the LGMPA.

- Your petitioners know nothing about them.

- This is a Mortons Fork for the committee.

- Evidence from BIS has now **led the promoters to accept** that these 4 bills need amendment to meet the SD.

- Your petitioners contend that all previously enacted private bills are included with this concern – they include Westminster, Leicester, Liverpool, Newcastle, Maidstone, Medway, Bournemouth, Manchester – they do accept these Acts don't concern this committee.

- The promoters have submitted proposed amendments to the 4 bills to justify restrictions on pedlars to meet the strict ORRPI test in Article 4.8.

- Your petitioners reject the amendments for the following reason of **Principle**:

- It is the Authorisation Scheme for Regulating Street Trading **itself** that must be subjected to the Overriding Reason Related to the Public Interest test for

justification.

- If it meets that initial test, only then can justification for the restriction on pedlary be considered and this is not limited to the pedlar clause but all clauses because they all impact on pedlars. The promoters have not addressed this issue of Principle.

- This is the second Mortons Fork for the committee.

- Pedlar restrictions have not been significantly changed by the promoters but what they have done is cherry picked a few words of text from the ORRPI Article and placed them in the pedlar clause **as if to satisfy** the SD.

- Your petitioners think that what the promoters have done is no more than window dressing in spite of Ms Levin's claim to European expertise.

- If we go into the pedlar clause amendments 1-6 of Clause 5, we see that the promoters want little or no change to restrictions on pedlars.

- But when we turn our attention to clause 7 we see a very dangerous potential for these local authorities to rid the pedlars on any of intentionally vague terminologies – as vague as (a) & (b) that refer to public safety, security and health. It is well established concern that these words are widely used and sometimes abused to justify all and any new regulation.

- No evidence has been submitted that the identified public problem of "**oversized trolleys**" have ever caused a single death or a single serious injury – this is the proper measure referred to in Article 23.5 of the SD.

- By striking out clause (c) the promoters now accept that they have no powers to impose control on competition under Article 1.5, 9 & 10 of the S D.

- At the entry underlined (c) the promoters choose the words *"protecting the environment (including the urban environment)"* . Your petitioners are unsure if the promoters realise that pedlars and their trading activity form part of the environment that Article 4.8 of the S D refers to. What this particular justification leaves out is mention of the ORRPI justification to retain pedlary being *"conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives"*. The promoters have not revealed if they have formulated policies in each of these categories. There are S D Article needs to satisfy non-discrimination, ORRPI and consideration of less restrictive measures but there has been a deafening silence from Counsel for the promoters

in this regard. The committee has now heard from the petitioners how less restrictive measures are available and can be achieved.

- Your petitioners are concerned that the promoters want control not only on fixed material objects, rightly so, but to interfere in the historic and cultural life of this country.

- Your petitioners are very alarmed that there is scope in such vague terminology to reject a trader who does not conform to approved stereotypes.

- What the promoters have not submitted in evidence or by amendment is whether or not the Authorisation Scheme for Street Trading under the LGMPA is justified under the S D. Nor can they until the LGMPA through government amendment, meets the SD.

- At 7 (d) & (e) [refer to it] we come to the first and only possible justification that the promoters have for the Authorisation Scheme itself to continue in the Public Interest. This consideration of Road safety makes sense because regulation covers all static objects in a public place or on a highway, including licensed trader apparatus. It does not include pedestrians or pedestrian traders and their apparatus.

- Your petitioners have made many submissions to BIS to consider Article 4.8 as an ORRPI to justify retention, amendment and strengthening of the Pedlars Act though your petitioners accept that this is also outside the scope of this committee.

- The promoters have relied on Assent of previous bills to justify these 4 but it is now foreseeable that those previous bills are not fit for purpose under the S D as they do not meet the strict ORRPI test, again a matter outside the scope of this Hearing.

- Evidence will shortly follow [Naomi] from the petitioners that pedlars are being prosecuted since the deadline for S D implementation for acting as a pedlar in private Act jurisdictions.

- Your petitioners contend that faulty legislation has been drafted by agents for the promoters since 2006 without regard to the S D.

- They would ask Madam Chair to have BIS give a firm date for amendment of the LGMPA.

- They would ask also that the committee of this Hearing reserve judgment on the bills until such time following Statutory Instrument amendment to the LGMPA, however long that now takes to complete. BIS is empowered to make representation to the European Commission to request a transitional period to implement the S D throughout all Street Trader and Pedlary Law to avoid infraction proceedings by a member of the public.

- Your petitioners are concerned that as soon as the government brings about amendments to the LGMPA that satisfy the S D then it can wipe its hands of the responsibilities that it currently has to the public in regard to pedlary. That responsibility then shifts to Local Government that is not answerable to the EU but to HMG via the Provision of Services Regulation 2009. What HMG cannot do is avoid infraction proceedings against it by the EC on 3 tests, namely -1) non-communication; 2)non-conformity; 3) complaints of bad application. BIS are in communication with pedlars.info in regard to this matter.

- Your petitioners are concerned that most of these preceding matters cannot be raised in the lower courts in their defence of acting as a pedlar and are in consequence exposed to potential victim status by the bills.

- These are your petitioners initial concerns with the promoters proposed amendments.

Should the committee call on the promoters to lodge any further amendments subsequent to this Hearing, for approval by Counsel for the House, then your petitioners humbly request, as stakeholders, that they be invited to comment to Counsel on those such amendments before they are enacted. They request this because of what has previously occurred without petitioners' knowledge to what occurred to the agreed instructions handed to the other House Counsel for the Bournemouth Borough and Manchester City Council bills. What resulted in textual enactment is very difficult for pedlars to understand and was agreed neither by the other House Select Committee nor the petitioners.

Full submission – part 2

END