AC-2023-BHM-000072

In the High Court of Justice
King's Bench Division
Administrative Court

In the matter of an application for Judicial Review

THE KING

On the application of

ANDREW LOGIE

Appellant

-and-

CROWN COURT AT BIRMINGHAM

Respondent

-and-

BIRMINGHAM CITY COUNCIL

Interested Party

EXPERT OPINION REPORT

Prepared for: Mr Andrew Logie

Prepared by: Mr Robert Campbell-Lloyd, Pedlars.Info, Branchfield House, Ballymote, County Sligo, F56VF29 Republic of Ireland – email: pedlars.admin@gmail.com

Date: 14 April 2024

Table of Contents

Executive Summary

The facts of this case are in essence various accounts by various witnesses of periods of time that Mr Logie a certificated pedlar was allegedly stationary whilst trading resulting in him being found guilty of street trading without authority contrary to local street trading regulations.

Mr Logie admits to being a street trading pedlar with the authority of a Pedlars Certificate and therefore entitled to claim the exemption for pedlary from local street trading regulations.

A guilty verdict was handed down in both Magistrate and Crown Court and Mr Logie seeks Judicial Review of the decisions based on dubious case law.

Mr Logie contends that the primary Authority relied on by the prosecution in both Courts *Watson v Malloy* was unreliable in that opinions and more especially a novel aphorism and its many subsequent interpretations relied on since *Watson v Malloy* were incompatible with the historic nature of pedlary and its statutory wording under the Pedlars Act.

Mr Logie contends that *Watson v Malloy* failed to prove beyond reasonable doubt that the words in the *Pedlars Act* 'travels and trades' can only be interpreted as 'travels whilst trading' implying that the pedlar commits an offence if he stops between sales.

Mr Logie relied on but failed to produce in Court two cases subsequent to *Watson v Malloy1988* being *Manchester v Taylor 1989* and *Tunbridge Wells v Dunn 1996* in which the pedlar was found not guilty for stationary periods of 10-20 minutes.

Mr Logie contends that if courts continue to uphold *Watson v Malloy* as reliable then the Pedlars Act in effect been undermined and made redundant and a Pedlars Certificate rendered worthless.

Introduction and Expert's Background

I Robert Campbell-Lloyd was a professional pedlar during the years 1995-2002 trading throughout the UK under the authority of a Pedlars Certificate under the *Pedlars Act* and as a result of the entrepreneurship provided by the *Pedlars Act* to offer my unique product in the public domain I subsequently established an online trading portal.
I no longer trade under a Pedlars Certificate but provide pro bono assistance to others.
I am administrator of pedlars.info a not-for-profit online pedlary reference centre for regulators and the regulated that I established in 2007 with two professional colleagues Mr Nic McGerr and Mr Simon Casey RIP.
In 2009 I published a 40 page briefing paper as part of government stakeholder consultation that summarised the History of Pedlary, Chronology of Legislation, Chronology of Precedents, Chronology of Government Reports, Chronology of Discrimination and Abuse by language, Definitions, Language and Glossary, National Legislation Proposals Outstanding Issues etc.
I have acted as a Roll B Parliamentary Agent in several Select Committee Hearings on Private Bills modelled on the City of Westminster Act that negatively affect pedlary, namely those in Bournemouth, Manchester, Canterbury, Leeds, Nottingham and Reading.
In 2012 I formalised a complaint to the European Commission concerning HMG failure to comply with the European Services Directive regarding pedlary.
I have consulted widely with HMG, police and councils regarding guidance on pedlary and related laws.
I together with colleagues have published some 150 articles online at pedlars.info regarding legislation affecting pedlary.
I have advocated against HMG attempts to find the *Pedlars Act* incompatible with the European Services Directive and its later attempt to repeal the *Pedlars Act*.
In 2015 I was invited by the Bishopsgate Institute London to present an update Briefing to Government on The Profession of Pedlary – History, Politics, Policy and Legislation.

Although not qualified to practice law I consider myself competent on the subject of pedlary and related law through long and direct experience.

In 2020 Mr Logie enquired through pedlars.info to advise him regarding interference with his trading activity by council operatives in Birmingham. Mr Logie is severely dyslexic and

requested assistance in drafting coherent responses during the following years concluding in his application for this Judicial Review. Mr Logie is not competent to produce or speak to legal argument but is a competent entrepreneur pedlar that understands and expresses the oral traditions of pedlary and how it differs to Schedule 4 Street Trading.

The purpose of this report is to assist the process of Judicial Review of decisions made in Birmingham Courts based wholly on what I consider is dubious case law and the unfair consequences of its application.

The scope of this report includes clarification of terminology; analysis of the Summons charge; analysis of the transcript of the Crown Court Hearing dated 2 December 2022 and various authorities relying on mischievous interpretation and unrealistic opinions unfounded in historic fact.

Essential Terminology

Mr Logie admits to 'street trading' and also denies allegations of 'street trading' and whilst both are valid statements this anomaly is simply explained.
I contend that there is no historical analysis of the origins of early trading in the UK that can deny that pedlars and hawkers were the original street traders even prior to the 1871 *Pedlars Act* so this report for clarification will refer to 'pedlars' also as 'street trading pedlars' and/or 'pedlar street traders'.
In 1982 the *Local Government (Miscellaneous Provisions) Act [LGMPA]* introduced *Schedule 4 Street Trading* to tightly regulate the licencing of static spaces on the public highway and so this report to provide clarity and differentiation refers to those particular street traders as 'Schedule 4 street traders'.

The act of trading is described in the *Pedlars Ac*t as *carrying to sell or exposing for sale any goods wares or merchandise* and similarly in the *LGMPA Schedule 4* as *the selling or exposing or offering for sale any article in a street*. The distinguishing word is 'carrying'.
The *Pedlars Act* provides discretion to trade any place throughout the UK whereas Schedule 4 street traders are restricted to static allocated licensed/consent spaces in a particular town.
This then is the first important difference between the two types of street traders one having discretion with an ability to move about and the other not.
Schedule 4 provides that illegal/unauthorised street traders in Schedule 4 designated streets commit an offence and may be prosecuted and Mr Logie endorses the fact that such traders cause a problem for lawful traders.

The Summons that Mr Logie received alleged that he *did engage in street trading in a consent street … without being authorised to do so, contrary to Schedule 4*.
Mr Logie admits to street trading because he is a street trading pedlar and he also admits that he is not authorised by council under Schedule 4 because he is authorised by police acting under the Crown to issue his Pedlars Certificate under the *Pedlars Act* and he denies the Schedule 4 allegation of an offence for being without a Schedule 4 licence or consent. A local council does not issue pedlars certificates and therefore cannot authorise pedlary.
Mr Logie has no reason, desire or intention to obtain a Schedule 4 licence or consent because such licence limits his ability to move from an allocated static pitch in for example Birmingham; it limits what goods he can sell; it limits what hours he can work; it requires

public liability insurance for large stalls erected on the highway; it is simply too restrictive because he travels and trades in different places around the country such as Manchester, Leeds, Blackpool, Derby, Stafford, Rugeley, Hanley, Long Eaton, Walsall, Wolverhampton, Beeston, Sheffield, Matlock, Chesterfield, Tamworth and Birmingham.

In 2009 I produced in consultation with HMG a 7 page document that differentiates and compares certificated with licensed/consent traders and can be summarised as follows:
A street trading pedlar is mobile and able to move about – a Schedule 4 street trader is not;
Scale and proportion of a pedlar's apparatus is small - a Schedule 4 street trader stall is large;
Pedlars do not obstruct the highway because they can move – a Schedule 4 trader's pitch is an obstruction requiring approval by the Highway Department;
Pedlars cause no public liability – Schedule 4 traders incur public liability requiring insurance;
A pedlar's authority is a Certificate – Schedule 4 authority is a licence or consent;
A pedlar acts under the Pedlars Act – Schedule 4 traders act under LGMPA;
Pedlars are self-regulating – Schedule 4 traders are heavily regulated by the local authority;
Pedlars are subject to civil penalty for offences – Schedule 4 traders are subject to criminal penalty for offences.

I submit that the wording of the Summons is anomalous and an intended abuse of language that obscures rather than defines the two distinct and separate types of street trader. Mr Logie presented with the language of this Summons is purposefully conflicted because he is on the one hand 'guilty' and on the other hand 'not guilty' of such charge that leads to unnecessary confusion in court.

The intention of Parliament in introducing Schedule 4 I contend was not to prohibit street trading pedlars. This is evidenced by the Schedule 4 exemption for *a person acting as a pedlar under the authority of a pedlars certificate granted under the Pedlars Act 1871.* This exemption from the whole of Schedule 4 regulation is dependant exclusively on Mr Logie 'acting as a pedlar acted in 1871' and every year up to today and be subject to any alterations to the *Pedlars Act* that may have occurred but none have been cited.

Civil or criminal penalty

Regulating pedlary is not within the remit of Local Authorities. It is police that retain powers under the Pedlars Act to penalise offences as a civil matter whereas local authorities now choose criminal legislation to prosecute pedlary.

I contend that a fair and more precise wording of a Summons for a civil offence would allege that the person 'did not act/was not acting as a pedlar under the authority of a pedlars certificate issued under the *Pedlars Act* 1871 contrary to Schedule 4 Section 1 subparagraph (2) (a)' and if found guilty be subject to a civil penalty under the *Pedlars Act* Section 16 *any court before which any pedlar is convicted of any offence…may deprive such pedlar of his certificate*. This wording makes clear the charge with the only question before a court 'whether or not the person was acting as a pedlar acts under the *Pedlars Act*.

What has changed since 1871 – did Schedule 4 change provisions in the Pedlars Act?

I submit to this hearing that there is no reliable or realistic historical evidence or legal authority that can negate Mr Logie's common sense understanding that the *Pedlars Act* provides his trade with complete discretion to trade any place throughout the UK; to trade any goods; to trade any time of the day or night; to trade by whatever means he chooses providing it be on foot and of a pedestrian scale and proportion; to be mobile and have the ability to move; to trade in any one public place, village, town or city for as long as his customers want to trade with him. He is a self governing sovereign trader operating within the terms of private business with private people in the public domain and limited by the Social Contract.

Was it in case law that the description of a pedlars activity was corrupted?

I will submit in this report that most Authorities subsequent to Schedule 4 introduction in 1982 that have successfully led the way to alter the meaning of how a pedlar may act under the *Pedlars Act* have done so on novel unsubstantiated opinions and wishful thinking, void of historical evidence, void of legal precedent, void of common sense, with the single intent to restrict, hinder and/or punish street trading pedlars in Schedule 4 jurisdictions where councils have preferred traders.

Mr Logie urges this court to be mindful of the lack of historic or factual evidence supporting the many opinions about pedlary originating and cited in case law.

On behalf of Mr Logie I will now submit my analysis of the transcript of the Hearing.

Crown Court Hearing - Analysis of the Transcript

On page 4 at para B Henderson J poses the question *whether he [Logie] commits the offence because he's acting outside the terms of that [pedlars] certificate.* In other words - was he acting as a pedlar?

He goes on to offer his personal opinion by inferring that Logie will be outside the terms of his certificate because he has *the difficulty to explain his means of travelling to the city centre* citing Mittings J in *Jones v Bath & NES 2012* reference to such words as *peripatetic*[1] and *ambulatory*[2] and he goes on at E *the point of being a pedlar is you're on foot, literally on foot* and at F reveals the judge's particular ignorance that *if he comes into town with a load of stuff on the bus, I think, on the train, in a van or a car, he is not a pedlar or he's not acting as a pedlar when he's selling that way.* The particular ignorance is that Henderson J's presumption of Mr Logie's guilt fails to comprehend that a person is not engaged in the activity of pedlary nor is a pedlar 'selling' whilst on a train, or driving a van or car because at such time he is just 'a person' who hasn't arrived at the desired destination where trading or acting as a pedlar may begin.
I submit that Henderson J sought to prejudice the hearing at this very early stage by offering his belief that the pedlar's activity of travelling has to be carried out at the same time as the activity of trading. At para H he says *if he [Logie] wants to attack that legal ruling [case law Watson v Malloy], he has to go to a higher court.* This is what brings Mr Logie to judicial review.

After setting out his opinion he finally on page 5 at para A examines the 'facts' of Mr Logie's means of travel to Birmingham and after Mr Logie's explanation at para B says *Okay. Well, that may get you out of the woods; we'll see* inferring that it may not get him out of committing an offence.

Later in the hearing at page 16 para B he finally read Mr Logie's bundle copy of *Sample v Hulme 1956* and realised that his opening legal commentary is in doubt in the light of the Lord Chief Justice Goddard's ruling [page 448 para F] that *it seems to me that it is impossible*

[1] Walking about from place to place, itinerant
[2] Having the ability to walk

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.

This common sense interpretation of law supports the reality that acting as a pedlar begins once he displays and offers to trade his wares to the public rather than whilst travelling between places. This issue arises again in *Watson v Malloy* and I will come to that shortly.

At page 5 para C Henderson J is informed by Mr Barbour that the means of Mr Logie's arrival in Birmingham is not an 'issue' in this case and Henderson J ceases that line of examination without apology.

On page 5 para F Henderson J directs Mr Logie not to raise matters of law until the end but does not prevent Mr Barbour beginning at para H referencing in detail three authorities doing exactly what Mr Logie was refused, raising matters of law.

On page 5 para H Mr Barbour summarises *Watson v Malloy 1988* with an extract *a pedlar is someone who sells on the move, an itinerant seller. A pedlar is someone who trades as he travels, as distinct from someone who travels to trade.*

Mr Logie has accepted the direction from Henderson J on page 4 para H that on his behalf I take issue with *Watson v Malloy 1988* and subsequent authorities by way of judicial review to scrutinise the Hutchison J opinion that does not clarify but alters without substantiation the statutory activity of a pedlar.

Interpretation concerns with *Watson v Malloy*

Having studied most authorities concerning pedlars I submit that *Watson v Malloy* has affected all subsequent successful prosecutions of pedlars under the *Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 Street Trading [LGMPA]*on the basis that prosecutions invariably cite Hutchison J's fanciful opinion about what he refers to as *the vital conjunctive "and" between travels and trades… encapsulated in an aphorism… a pedlar is one who trades as he travels as distinct from one who merely travels to trade.* This is the argument relied on by Mr Barbour et al but I contend is without basis because the *Pedlars Act* does not proscribe a pedlar to for example 'travel whilst trading' or 'travel as he trades' or even 'travel to trade'. Instead it accommodatingly provides for *travels and trades* as one might expect from an itinerant person.

An 'itinerant' is one who travels from place to place and a pedlar is no different to an itinerant preacher or an itinerant judge that travels from place to place to carry out their profession at some destination be it a village, a town or another man's house. The fact that they are itinerant does not mean they have to keep travelling whilst doing the activity of their profession at an appointed destination.
The pedlar, the preacher and the judge are just 'persons or people' whilst travelling. Their different professions are not activated 'whilst' travelling. A preacher's profession begins when he reaches the church. The judge's profession begins when he reaches the Court. The pedlar's profession begins when he reaches his trading destination.

Citing *Watson v Malloy* has persisted since 1988 and I agree with Mr Logie that it is open to and requires challenge.

I contend that *Watson v Malloy* is an unsound authority in that it purposefully misrepresents how a pedlar must act whilst trading and as such and without declaration it effectively changes the statutory legislation, the *Pedlars Act*.

Mr Barbour on page 6 para B then introduces further law *Jones v Bath & NES Council 2012* by quoting Mitting J's opinion para 13 (as with Henderson J's opening remarks) *someone driving his goods in their own van or car to a town or city to offer goods for sale is not a pedlar as he has not travelled to the town on foot. There is a requirement to conduct the*

activities on foot both for travel and trade. I contend that Mitting J errs in relying on Hutchison J's opinion in *Watson v Malloy.*

Mr Barbour continues discussion about law by introducing *South Tyneside Metropolitan Borough Council v Jackson* in which Kennedy LJ's opinion is *the purpose in moving by a pedlar must be to bring his wares to the attention of customers. One cannot move just to take advantage of the defence [under Schedule 4 LGMPA] available to pedlars.*

I contend that Kennedy LJ failed to appreciate the ingenuity and creativity allowed by the category 'other persons' in Section 3 of the *Pedlars Act.* If a person chooses to display his goods [in that case CD's] whilst mounting and playing a mobile piano in a busy shopping street then the *Pedlars Act* allows such performing 'other persons'. The only test should have been whether or not the pedlar's modus operandi was of a pedestrian scale and mobile? A pedlar's ability to move is important for reasons of safety on the public highway - for example he may need to move himself and his apparatus for an emergency vehicle.
It is quite spurious to allege that the only reason a pedlar moves is to take advantage of the *LGMPA* exemption and in my opinion this puts Kennedy J's opinion in doubt.

Mr Logie goes to where he thinks there may be customers. He may travel 100 miles to 'bring his wares to the attention of customers' [Kennedy LJ]. Mr Logie freely admits that he often also moves to avoid confrontation, intimidation and harassment by officers hell bent with stop watch mentality seeking to get rid of any trader the local authority has not licensed.

I submit on Mr Logie's behalf *Watson v Malloy* is unreliable on the basis that its novel opinions lack substantiation by way of historical evidence and/or evidence from pre 1988 case law. I also submit that it undermines the intent of Parliament in providing pedlars with the specific exemption from Schedule 4 because it effectively leads to prohibition of pedlary.

The transcript and examination of witnesses by Mr Barbour will now be examined to show the prohibitive effect of *Watson v Malloy* on Mr Logie.

Transcript Examination of the Witnesses by Mr Barbour

Each of the witnesses produced stop watch evidence to support their understanding that if a pedlar stopped for any other reason than to make a sale he fell outside the Schedule 4 exemption for acting as a pedlar and was guilty of criminal offence. The many combinations of exactly recorded minutes formed the facts of Mr Barbour's case and with confidence in applying *Watson v Malloy*, Henderson J concurred that those facts alone took Mr Logie outside the protection of the Schedule 4 exemption.
Henderson J following the hearing wrote *I will not state a case. This was a decision on the facts of the case.*

Mr Logie explained to the court that he relied on a period of 15-20 minutes referred to in case law and is why he says on page 14 at para C that he timed his movements but when pressed by Henderson J he could not lay his hands on his copies of the Authorities to assist the Hearing.

I now provide links to the two said Authorities *Manchester v Taylor 1989* and *Tunbridge Wells v Dunn 1996*. The pedlars stopped for 10-15 and 15-20 minutes respectively and were found to be acting as pedlars in spite of opinions cited in *Watson v Malloy*.
I can confirm as administrator of pedlars.info that many pedlars rely on the 15-20 minutes before moving if only to avoid negative interaction with zealous officers. Mr Logie relies on the fact that under the *Pedlars Act* there is no time limitation on how long a pedlar may stop. That a pedlar remain in perpetual motion is an unrealistic invention originating in *Watson v Malloy* and in my opinion a nonsense. The activity of exposing, displaying, selling and procuring orders for goods is a static activity and common sense.

In an extreme example of zealotry the witnesses on page 10 of the transcript at para B-C observed Mr Logie for a few minutes as he was standing, not trading but setting up his stall under shelter from the rain preparing his stall to begin trade. He was immediately cautioned for committing an offence under Schedule 4 and subsequently prosecuted.

Further witness examination continued throughout the hearing with little variation in statements of fact concerning precise numbers of minutes Mr Logie was observed but during each recorded interval failed to log the times he made sales and how long each took.

It is my opinion that the evidence having been judged primarily on the basis of Mr Logie falling foul of *Watson v Malloy* that Henderson J was content to find Mr Logie guilty on the fact that he stopped moving during trading.
Mr Barbour was content with the witness understanding on page 23 para F that any trader not on the council's approved Schedule 4 authorisation list commits an offence. This reveals shocking ignorance by officers unchecked by Henderson J or Mr Barbour and indicates why there is such blatant disregard for Mr Logie's authorisation being his Pedlars Certificate rather than a council list of approved traders.

It is my considered opinion that the witness statements provide the essential evidence that Mr Logie was at all times in fact acting as a statutory pedlar was entitled to act between 1871 and 1988; that he was further entitled to continue in the same manner from 1988 to today; that he was entitled to street trade as a pedlar; that he carried one of two lawful authorisations being a valid pedlars certificate; that he fulfilled the terms of the *Schedule 4* exemption; that his only trading similarity to a Schedule 4 trader was/is that they both lawfully trade in the street; that the scale and proportion of his operation is by no metric comparable to a Schedule 4 trader; and that there is no justification for imposing the burden of guilt and criminality.

Other Case Law not cited

I now cite the case of *Chichester v Wood 1997* for the purpose of indicating (half way down page 2) that case law attempted to establish a test or checklist for determining what a pedlar can and cannot do. Brooke LJ and Blofeld J went on to share the opinion that *there is a point of law here of general public importance.* I contend that this persists to this day.

Various case law was relied on in drafting the list of 9 tests summarised at page 6 and I now address each in order.

So called tests for determining pedlary

In *Chichester-v-Wood 1997* Brooke LJ provides a contextual prerequesite for interpreting and applying legislation (page 8, 2nd para) *the words in an Act of Parliament are to be interpreted in the context of the Act in question at the time the Act was passed*.

Pedlars come from an oral tradition and the habits of 18th & 19th century pedlars and how they acted precisely whilst trading relies on understanding the wide variety of freedoms described in Section 3 of the Pedlars Act in that very few restrictions apply. As described already pedlars had complete discretion over what, where, when, and how to trade.

Nine findings from various authorities were listed as tests in pedlary cases and I provide essential commentary on the shortcomings of each.

1 Each case depends on its own facts.

I have previously submitted that historic/traditional and contemporary principles that differentiate pedlary from Schedule 4 trading provide essential understanding and context to facts and without which the facts such as a fact that a pedlar was stationary for a few minutes or an hour should be considered inconsequential.
The first principle that differentiates the 2 types of trading activity is that a pedlar's apparatus can be moved as a pedestrian means of exposing, demonstrating, selling, taking orders for procurement, finding different locations, seeking engagement with people & customers all on the basis of private business with private shoppers. In comparison a Schedule 4 trader cannot move his apparatus, is static on a highway in a controlled and allocated space approved by

the highways department and heavily regulated by council to limit public liability from large obstacles placed on the highway.
The second principle that differentiates the 2 types of trader concerns scale and proportion and whereas a pedlar's apparatus can be no bigger than any other shopper handling a bag, a basket, a push-chair, a wheelchair or a trolley a Schedule 4 trader is in effect a static shop in the street some 10-20 times larger in scale.
The third principle that differentiates is that a pedlar can choose when to trade or not to trade, how long to trade, what to trade whereas a Schedule 4 trader has rigid conditions and controls on each.
Such pedlar freedoms may be an anathema to council enforcement officers but they are historic liberties granted under the Pedlars Act and in force today. It may be that the local authority seeks to limit pedlary in favour of revenue streams from allocated pitches but it is not within their remit to discriminate against a lawful trader with lower overheads.

I consider that the facts require realistic context.

2 *A pedlar goes to his customers rather than allowing them to come to him*.

There is no historic or statutory foundation other than the Hutchins J off-the-cuff aphorism from *Watson v Malloy* to the notion that a pedlar goes to his customers rather than allowing them to come to him. It is common sense to understand that if someone with a box or a trolley full of goods comes up to people in the street one after the other attempting to sell something that there is any potential for trade and rather a suspicion of bad faith and dishonesty at play. A pedlar senses where potential customers are and his movements follow that sense and successful trade is dependent on stopping for such time as is required by various types of private interest in what shoppers can see close up or from a long distance away.

I consider the test has no foundation in the *Pedlars Act* and based on wishful thinking originating in *Watson v Malloy* and is not a valid test.

3 *A pedlar trades as he travels rather than travels to trade.*

This imagined aphorism is from Hutchins J in *Watson v Malloy*.

I consider the test spurious for previously addressed reasons

4 *A pedlar is a pedestrian.*

The origin of the word is to be found in the Latin ‘pedus’ the foot, hence Pedlars Act an Act of Parliament that is an enabling legislation that provides bona fides for mobile traders to go any place throughout the UK without fear of being prosecuted under the *Town Police Clauses Act 1847* [Clause 28] for wilfully and wantonly disturbing any inhabitant.

This test is simply a statement from the *Pedlars Act*.

5 *If a pedlar is a seller, rather than a mender he sells reasonably small goods*.

There is no legislative restriction on the size of a pedlars goods. A pedlar can by law trade ‘any goods’. The only relevant condition is that the trading is mobile. Menders of chairs and handicraft traders have been removed from the Pedlars Act under *The Provisions of Services Regulations Act 2009* Section 45.

I consider this test not useful and is no longer relevant.

6 *He is entitled to have some small means of assisting his transport of goods such as a trolley.*

There exists no legislative restriction on the scale and proportion of a pedlars means provided only that he is mobile and the means of operation are pedestrian.

This test simply confirms how a hawker can operate under the Pedlars Act so not a valid test.

7 *It is necessary to consider his whole apparatus of trading and decide if it is of such a scale to take the person concerned out of the definition of pedlar*.

There is no legislative restriction other than applying common sense that the means are pedestrian means. If the scale and proportion of the means are so similar to an unmovable Schedule 4 stall then clearly his means are outside the definition of a pedlar but in this case the pedlar’s means are pedestrian and some 20-30 times smaller in scale.

I consider this test lacks definition and is invalid.

8 *The use of a stall or stand or barrow may indicate an intention to remain in 1 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 and not a pedlar*.

A pedlar is one who carries goods and a hawker uses any pedestrian means of carrying goods. Nothing in the Pedlars Act prohibits a pedlar from remaining in one place or in a succession of different places. Nothing in the Pedlars Act obliges a pedlar to stop only to effect a sale. Nothing in the Pedlars Act prevents customers approaching, nor does it states that he must go to the customer. The act of trading includes exposing for sale, demonstrating, conversing, exchanging ideas, telling stories, enticing, inviting and all manner of novel time consuming advertising and promotion. Nothing in the Pedlars Act forces perpetual motion.

I consider this test is without merit.

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 and not a pedlar*.

A person whose profession is pedlary will have travelled from home to a destination in a town or city where consumers gather. During that travelling time the person remains just a person or perhaps a driver or a bus customer and cannot be regarded an active pedlar. Having reached the town the person prepares to begin trading by going on foot with or without means of carrying goods to where he thinks shoppers have gathered. The travelling has ceased and the trading begun thus confirming the person is then a street trading pedlar.

I consider this test is without merit and invalid.

I do not believe that these 9 so called tests assist in clarifying the point of public importance noted by Blofeld LJ to define the distinction between a pedlar and a Schedule 4 trader. Instead I believe that they intentionally blur language so as to make genuine pedlary indistinguishable from Schedule 4 street trading.

A more accurate test

Throughout this report I have proposed more specific tests based on a realistic and historic understanding of the *Pedlars Act* rather than on anomalous authorities subsequent to the LGMPA:

1 Does the trader have a valid pedlars certificate?
2 Is the modus operandi mobile and pedestrian?
3 Is the person's trading operation comparable to a Schedule 4 trader?

I believe that these are the only relevant tests in determining if a person is acting as a pedlar.

Is a 10-20 minute rule reasonable?

Mr Logie admits that he exposes his goods for sale and finds that 10-20 minutes being distinctly different to a Schedule 4 trader that remains stationary for up to 8 hours every day is a reasonable period of time for customers in a street to feel comfortable to approach him to enquire about his goods and purchase or not. If the pedlar secures a sale then that 10-20 minutes repeats. If there are no sales then a pedlar has no incentive to remain in that place and moves on to find another location with greater potential for trade.

Pedlars throughout history have travelled to a town to trade in the busiest places where other pedestrians and potential customers congregate and were never prevented from stopping for a minute or a day until recent imposition of *Watson v Malloy* and it is not only common sense for a pedlar to avoid zealous council officers but also common sense to adopt findings in alternative Authorities that affirm a reasonable compromise between 8 hours and a few minutes remaining stationary.

Conclusion

Mr Logie has brought this action to Judicial Review because he believes his pedlary in Birmingham has not been treated fairly, justly or in proper context of primary legislation in either the Magistrates Court or the Crown Court.
In neither court was he permitted to speak about his understanding of the historic activity of pedlary or challenge case law and told that discussion about the law were for a higher court because the lower courts were bound by case law.
On Mr Logie's behalf I have prepared this report to challenge opinions and judgments in case law beginning with the most toxic being *Watson v Malloy*.

The inevitable questions for judicial review are as follow:

Is it misleading to say that a pedlar cannot be a street trader?
Is a Pedlars Certificate a lawful authority to trade in Schedule 4 designated streets?
Is a pedlar guilty of an offence for stopping between sales?
Is Hutchison J's interpretation of the *Pedlars Act* that a pedlar 'travels whilst trading' or 'trades as he travels' based on historic and factual evidence or is that interpretation a corruption of the Pedlars Act text 'travels and trades' rendering *Watson v Malloy* unreliable?

In considering this case and for the reasons I have outlined from my 29 year specialist expertise it is clear to me that unreliable language, unfounded opinions and unsafe judgments have prejudiced proper protection of Mr Logie's pedlary.

If *Watson v Malloy* is upheld by this judicial review then the Pedlars Act provides no benefit to pedlars and renders a Pedlars Certificate worthless and I trust that judicial review justice has the authority and ability to properly scrutinise the weaknesses in case law and judge *Watson v Malloy* unreliable.

References

This report is presented in Word/pdf format with live links to legislation, authorities and reference documents.

Statement of Truth

I believe that the information and opinions expressed in this report are true to the best of my understanding and ability.

Signed: Robert Campbell-Lloyd
administrator pedlars.info

Date: 14 April 2024