

Peddling myths: when is a pedlar a street trader?

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Introduction

What, exactly, is a ‘pedlar’? Beyond lawyers and pedlars themselves, the word usually conjures vaguely bucolic images of itinerant tradespersons, more likely to be a feature in a Dickens novel than in a professional journal. But it is a word with important consequences for local authorities who have to police the difference between peddling and street trading on Britain’s high streets.

Mr Justice Ritchie in the case of *R (Logie) v The Crown Court at Birmingham and Birmingham City Council* [2024] EWHC 1397 (Admin) recently tried to put some hard edges on the definition of a ‘pedlar’, to go along with hard-edged consequences. Ritchie J decided that there is a “*temporal test*” implicit in the definition in s.3 of the Pedlars Act 1871 that allows a pedlar to sell from a fixed position for 15-20 minutes at a time. On this basis, he quashed three convictions that the Claimant, Mr Logie, had received in the Magistrates Court, and upheld in the Crown Court, for street trading without a licence.

Ritchie J claimed to draw this test from previous authorities, but it does not respectfully appear to us that any of the authorities support the stark rule set out in the judgment. From the perspective of traders and local authorities who regulate them, the judgment in *Logie* has the potential to upend how local authorities manage street trading in their areas. The combination of the potential practical difficulties this may generate, coupled with the tensions between the judgment and previous case law, means *Logie* may well need to be revisited by the courts in the future.

Background

Selling merchandise on the street is subject to street trading rules. The aim of the system is to enable local authorities to control the numbers, disposition and activities of traders on the streets for which they are responsible. For example, HHJ David Cooke sitting in the High Court explained that local authorities may exercise street trading to pursue a policy or “*economic objective*” for the betterment of their areas in *R (Poole) v Birmingham City Council* [2021] EWHC 1198 (Admin); [2021] PTSR 1705, paragraphs 57-61.

Relevant here are two categories of vendors: street traders and pedlars. Broadly, a street trader sells from a fixed position whereas a pedlar is a peripatetic and ambulatory vendor.

It is a criminal offence to sell merchandise on certain streets without a street trading licence issued by a local authority. There is an exception to this: it is not a criminal offence if the vendor is operating as a pedlar and has a pedlar's certificate.

The interaction between these two categories of vendor is important. The street trading rules enable local authorities carefully to provide for where street trading may and may not occur, and to regulate, for example, the size of a vendor's pitch and the type of goods sold. The permission for pedlars to trade on the same streets has the potential, if cast too widely, to frustrate those careful regulatory decisions by enabling pedlars (who should be peripatetic) to trade next to or in front of the existing street traders and shops with impunity, and with no limits on the numbers or locations of their trade. There is also a financial discrepancy between the categories; a street trading licence is substantially more expensive than a pedlar's certificate, because of the higher regulatory involvement of the local authorities with street traders.

Mr Logie's case

Mr Logie held a pedlar's certificate. He did not hold a street trading licence. On 17, 18 and 22 December 2020 local authority officers observed him on High Street in central Birmingham with a wheeled trolley in order to sell merchandise, including face masks and toys.

Birmingham City Council prosecuted Mr Logie for street trading without a licence.

The key facts, as found by the Crown Court, accounting for one correction made by the High Court Judge, were that Mr Logie had acted as follows (paragraph 49 of Ritchie J's judgment):

- On 17 December 2020, he traded from one position on High Street for 26 minutes;
- On 18 December 2020, while on High Street, he was confronted by officials from Birmingham City Council as he was setting up his trolley and he moved off after 10 minutes;
- On 22 December 2020, he traded over 35 minutes from two spots, on either side of High Street, for 15-20 minutes in each spot.

The offence is under the Local Government (Miscellaneous Provisions) Act 1982 (“**the 1982 Act**”). Paragraph 10 of Schedule 4 creates the offence of street trading without a licence, relevantly:

“10.-(1) A person who-

...

(b) engages in street trading in a licence street or a consent street without being authorised to do so under this Schedule;

... shall be guilty of an offence.”

As Mr Logie did not have a street trading licence, his defence to the prosecution was he was acting as a ‘pedlar’. The definitions for the 1982 Act provide (through a roundabout way) that someone lawfully trading as a pedlar will not commit the offence of street trading without a licence.

That roundabout way starts with the definition of street trading in paragraph 1 of Schedule 4:

“(1) In this Schedule—

...

“licence street” means a street in which street trading is prohibited without a licence granted by the district council;

...

“street trading” means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street;

...

(2) The following are not street trading for the purposes of this Schedule—

trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;

...”

So far, so clear. The problems arise with the definition of a 'pedlar' under the Pedlars Act 1871 ("the 1871 Act"). Section 3 of the 1871 Act provides an archetypal Victorian definition of the role:

“The term ‘pedlar’ means any hawker, pedlar, petty chapman, ‘Pedlar’, tinker, caster of metals ... or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered.”

Additionally, s.4 of the 1871 Act provides that a pedlar must also have a certificate in order to act. The certificates are issued under s.5 by a local Chief of Police but have no local geography limit and are valid nationally. Mr Logie had a pedlar's certificate.

However, the net effect of the definitions is that a pedlar must not only have a certificate but also behave as a pedlar while selling. So what exactly is a pedlar? The definition in s.3 is both vague as to the parameters of the role, and uses several phrases that bear little resemblance to modern traders.

Perhaps unsurprisingly given that s.3 has had 153 years on the statute book, this problem has come before the High Court on several occasions. It has though, consistently been difficult for the courts to settle on a satisfactory and comprehensive interpretation of s.3. Ritchie J in his judgment noted at paragraph 26:

“The definition in S.3 of the Pedlars Act 1871 has caused uncertainty for Local Authorities and Pedlars for decades.”

The Magistrates' Court and the Crown Court on appeal (which heard his appeal as a re-hearing) decided that Mr Logie had not been acting as a pedlar on the three dates and convicted him of street trading without a licence.

However, Mr Logie successfully sought judicial review of that Crown Court decision. For the reasons given in a judgment dated 7 June 2024, Ritchie J quashed the convictions and substituted them with acquittals.

Ritchie J and the “temporal test”

The most important and interesting part of Ritchie J's judgment lies in his interpretation of s.3 of the 1871 Act. After reviewing some of the authorities dealing with s.3, Ritchie J identified three "tests" for whether a vendor is acting as a pedlar: "*a temporal test, a movement test and an equipment test*" (paragraphs 37, 41). To act as a pedlar, a vendor must pass all three tests.

The relevant one for present purposes is the temporal test. Ritchie J decided that, as a matter of law, there is a "*15-20 minute rule*" such that a vendor may make sales from a stationary position for around 20 minutes, but not as much as 30 minutes, and still be a pedlar.

In paragraph 44(6) he stated:

"He/she may stay static for around 20 minutes but not so long as an hour before moving on to another area to attract different customers. That other area may be the same street or another street, but such movement must be real in the sense that the trader is reaching other customers, not just the same customers a few yards or metres away."

Ritchie J added:

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

Having now established a temporal rule, Ritchie J went on to say that the Crown Court Judge had failed to apply it, stating in paragraph 52:

“The Judge held that there was no 15-20 minute rule. In my judgment that was an error of law. ... to qualify to be a Pedlar under the Act, whilst trading in a Local Authority regulated street the trader: ... may stop for periods of time to attract the potential customers in the close vicinity for around 20 minutes safely. However, taking all of the case law into account, and the necessity for Pedlars to move towards customers regularly, in my judgment he may not stop for as much as half an hour before moving on to another area to attract different customers.”

The obvious attraction of Ritchie J’s interpretation is the simplicity of its application. The “*temporal test*” provides a reasonably straightforward basis to assess whether or not the definition is met. As the definition of a ‘pedlar’ most often arises in the Magistrates Court, where cases are often dealt with relatively quickly and sometimes without the benefit of submissions from legal representatives or the luxury of sufficient time to review the case law comprehensively, that simplicity brings substantial benefits.

Error of law in the “*temporal test*”

However, with respect to Ritchie J, it hard to see how a temporal test in the manner applied in the judgment (based on a universally applicable 15-20 minutes) is correct as a matter of law. Ritchie J principally relied upon *Tunbridge Wells v Dunn* [1996] 95 LGR 775 to establish this rule, stating (paragraph 37)

“I draw from this judgment that a Pedlar, when trading on a Local Authority street, may stop for 20 minutes to display his/her merchandise, because that is a necessary part of his daily trading whilst meandering around that road or that Town”

This appears to us to have been an error of law. *Dunn* is not an authority for the proposition that a specific or universally applicable number of minutes may be determinative of whether a vendor is a pedlar. The factual circumstances of that case involved a vendor who stopped occasionally for up to 20 minutes, but that number of minutes was not part of the reasoning (known to lawyers as the *ratio decidendi*) of the case. The Court in *Dunn* simply held that it was open to magistrates in all the circumstances to find that the vendor was acting as a pedlar. Rather than identifying a 15-20 minute rule, the Court drew upon the statutory definition of Pedlar to focus on broader characteristics of such a vendor and did not add any gloss to the statutory definition:

“After identifying various descriptions of persons selling on a small scale as individuals, the section then describes what it is they have in common. They are persons who ... travel and trade on foot and go from town to town carrying to sell or exposing for sale any goods.”

Notably, other judges have considered *Dunn* and not identified a universally applicable 15-20 minute rule. As far as we can tell, not a single case before *Logie* has identified such a rule. On the contrary, in *Croydon LBC v Burdon* [2002] EWHC 1961 (Admin), HHJ Wilkie sitting in the High Court drew upon *Dunn* to find that stops of 15 minutes or more, where the intention of the vendor is not to sell to a specific member of the public, are inconsistent with being a pedlar:

“16. In that case [*Wright*] the court also referred to a decision which went the other way, the case of *Tunbridge Wells Borough Council v Dunn*. In that case the respondent was not trading from a fixed position. He moved up and down the road in the course of selling and offering for sale his balloons. At no time did he have a stand whilst he was selling or exposing the balloons for sale. He did not have any articles on the ground around him. That was an example of a respondent who walked up and down whilst selling his wares. In those circumstances the Divisional Court had concluded that the respondent had been acting as a pedlar and the justices having acquitted him the local authority's appeal was dismissed against that decision.

...

18. It seems to me that the crucial point in this case is to look at the periods of time of which Mr Burdon was stationary, the distances that he moved and the nature of his conduct whilst he was stationary for the purposes of selling. Looking at the evidence which was before the magistrates, it is my judgment that someone who is habitually stationary for periods of certainly at least 15 minutes, often in excess of half an hour, and on occasion in excess of an hour, who during those stationary periods sells intermittently to members of the public, but has not stopped for the purpose of selling to a specific member of the public, is properly to be described as someone who is engaged in street trading and not being a pedlar. In other words, he is not someone carrying and selling goods as he moves around, stopping for the limited purpose of conducting a sale and then moving on, rather he is someone who is stationary in a

succession of different places for longer than is necessary to effect a particular sale or sales.” (emphasis added)

It does not appear from Ritchie J’s judgment that *Burdon* was cited to him; the decision that a 15-20 minute rule exists is wrong in light of it.

Moreover, by substituting the convictions with acquittals (rather than remitting the case to the Court below), Ritchie J treated the 15-20 minutes as a legally determinative and universal applicable rule. That is irreconcilable with the judgment of Brooke LJ in *Chichester v Wood* (CO/2738/96) (14 March 1997 transcript). Brooke LJ identified a list of 9 factors that determine whether a vendor is a pedlar, the first of which is “*Each case depends on its own facts*”:

“... a number of matters appear to be reasonably clear:

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

The first, eighth and ninth of these factors are inconsistent with the temporal test as applied by Richie J.

The unavoidable conclusion that should be drawn from the pre-*Logie* case law is that the definition of a pedlar cannot be distilled down to a set of simple or straightforward tests. Rather, the required analysis is to consider all the circumstances of a defendant's conduct and determine whether they working in a peripatetic and ambulatory way or whether they are seeking to act as a *de facto* street trader. In Mr Logie's case, a relevant circumstance overlooked by a simple application of the "*temporal test*" is that while he moved occasionally, he was typically moving short distances around the same street; he was essentially working the High Street and sought to move around only so as to bring himself within the pedlar exception.

The problem with the 15-20 minute rule is that Ritchie J treated it as legally determinative of a pedlar; i.e. that any vendor coming within that time limit would necessarily be a pedlar (unless she or he failed the "*movement test*" and "*equipment test*") and any vendor over the time limit would necessarily not be a pedlar. It was on this basis that, rather than quash the convictions and remit Mr Logie's case to the Crown Court, Ritchie J substituted the convictions for acquittals. It is hard to reconcile the treatment of three particular circumstances with the much wider approach taken in previous cases such as *Chichester v Wood*.

As well as being inconsistent with previous case law, it appears to us like that the judgment in *Logie* will create many practical problems for local authorities by hampering their ability to regulate street vendors. Local authorities generally take great care to apply the street trading rules (identifying their "*consent streets*" and "*prohibited streets*", and setting the conditions for street trading licence). The *Logie* judgment, however, appears to mean that pedlars can undo much of this by spending several days working single streets, provided they move to a different spot in the street every 20 mins or so. This removes much of the control provided to local authorities by the 1982 Act.

Conclusion

Logie represents an important development in the law on street trading and pedlars. While the drive to provide certainty as to the parameters of the definition of a 'pedlar' is laudable, it appears to us to be based on an error of law. Importantly, it has the potential to create a significant loophole in the ability of local authorities to regulate street trading. Therefore, it seems very likely that the matter will have to return to the superior courts in the future so that the *Logie* judgment can be revisited.

