



Neutral Citation Number: [2024] EWHC 111 (Admin)

Case No: CO/763/2023

AC-2022-LON-000887

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Tuesday, 30th January 2024

Before:

LORD JUSTICE POPPLEWELL

MR JUSTICE FORDHAM

Between:

**THE KING (on the application of
DIRECTOR OF PUBLIC PROSECUTIONS)**

Claimant

- and -

MANCHESTER CITY MAGISTRATES' COURT

Defendant

- and -

(1) RUTH WOOD

Interested

(2) RADICAL HASLAM

Parties

Tom Little KC and James Boyd (on costs), and **David Perry KC and Victoria Ailes** (on certification) (instructed by CPS), for the **Claimant**

Tom Wainwright and Elena Papamichael (instructed by Kellys Solicitors) for the **First Interested Party**

Owen Greenhall and Mira Hammad (instructed by Robert Lizar Solicitors) for the **Second Interested Party**

Determination on the Papers

Approved Judgment (Consequential Matters)

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Fordham J

MR JUSTICE FORDHAM:

1. This is a sequel judgment to [2023] EWHC 2938 (Admin) (the Main Judgment). It deals with consequential matters, following helpful written submissions filed by all parties in accordance with the timetable we laid down. There are three topics. No oral hearing is requested or needed. First, I would grant the application by the Claimant to certify the following point of law: “Is a Magistrates’ Court, when trying a person accused of an offence contrary to section 4A of the Public Order Act 1986 in circumstances where rights under Article 10 and/or 11 of the European Convention on Human Rights are engaged, required to conduct a fact-sensitive proportionality assessment?” The statutory conditions are met: (i) this is a point of law; (ii) it is of general public importance; and (iii) it is involved in the decision.
2. Secondly, I would refuse the Claimant’s application for leave to appeal to the Supreme Court. Mr Perry KC and Ms Ailes for the Claimant realistically recognise that, generally, it will be the Supreme Court who should consider whether the certified point is one which ought to be considered by that Court. But I see other powerful reasons to refuse leave to appeal. I do not accept that the cases are “in tension with each other”. The important premise of the certified point of law is that the Convention rights, in an individual case, are “engaged”. The Claimant accepts that the ingredients of the statutory offence “and of the defence” must “properly safeguard” those Convention rights. That must mean safeguarding in the individual case. No safeguarding test, other than the proportionality question, is put forward.
3. Thirdly, I would grant the Interested Parties’ applications for costs of the judicial review proceedings, exercising the discretion pursuant to s.51 of the Senior Courts Act 1981 s.51. There are exceptional circumstances, taking this case out of the usual run of criminal causes or matters, and justifying the application of the civil costs regime. I cannot accept the submission of Mr Little KC and Mr Boyd for the Claimant that there was “nothing about the present case which took it out of the run of criminal causes or matters, or which meant that it was very far from being a typical claim for judicial review of a decision of the magistrates’ court”. This has been – and continues to be – treated by the Claimant as a test case. It has been approached by the Claimant as requiring significant and substantial legal resources. It raised far-reaching issues. That is reflected in the Claimant’s own position on certifying a point of law of general public importance. This case was very far from typical. Still less was it a typical appeal or challenge to a criminal conviction. The Interested Parties were acquitted. They have necessarily had to defend these judicial review proceedings, brought by the prosecution. Important points of law were raised. They needed to be answered. The prosecution’s position has involved fluidity. There is force in the Interested Parties’ description of “shifting sands” which meant they were “required at each stage to meet a fresh case”. In relation to the proportionality question, see the Main Judgment at §42 (as to the position at trial and then when applying to state a case) and §§28-29 (as to the argument before us). In relation to the burden of proof, see the Main Judgment at §25. Further, there was a misconceived prosecution application to state a case, as the Judge had held. That application did not raise the points subsequently pursued (Main Judgment §51). The prosecution position is now being reframed, by Mr Perry KC and Ms Ailes. It was clearly in the interests of justice, and in the public interest,

that the Interested Parties should fully participate – in writing and orally – by their teams of junior Counsel, to assist us and to respond. They were fully vindicated. In all the circumstances, with the features which I have summarised, I am satisfied that it is just to make the costs order sought.

4. I record that the following cases were cited to us on civil costs in a criminal case: Murphy v Media Protection Services Ltd [2012] EWHC 529 (Admin) [2013] Costs LR 16 at §15; Darroch v Football Association Premier League Ltd [2014] EWHC 4184 (Admin) at §§37-42; Lord Howard of Lympne v Director of Public Prosecutions (Costs) [2018] EWHC 100 (Admin) at §§27-34; R (Bahbahani) v Ealing Magistrates' Court [2019] EWHC 1385 (Admin) [2020] QB 478 at §§87-101; and R (AB) v Uxbridge Youth Court [2023] EWHC 2951 (Admin) at §§15-20, 34-37, 42.
5. In relation to costs, I would accede to the following: the Interested Parties' requests for a payment on account of £20,000 to each of them; the Claimant's request for the period for those payments to be 28 days; and the Claimant's request for a stay of execution of all orders relating to costs pending the determination of proceedings in the Supreme Court. All of it is justified and appropriate. None of it was opposed.

LORD JUSTICE POPPLEWELL:

6. I agree.