

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

[2022] EWHC 3141 (Admin)



No. CO/4018/2021

Royal Courts of Justice

Wednesday, 23 November 2022

Before:

LORD JUSTICE WILLIAM DAVIS  
MRS JUSTICE FARBEY DBE

B E T W E E N :

THE KING  
on the application of  
CHOPSTIX TRADING LIMITED

Appellant

- and -

LUTON MAGISTRATES' COURT

Respondent

---

MR I THOMAS appeared on behalf of the Appellant.

MR A JOHNSON appeared on behalf of the Luton Borough Council.

---

**J U D G M E N T**

LORD JUSTICE WILLIAM DAVIS:

- 1 This is the judgment of the court, to which we have both contributed.
- 2 On 8 October 2021, District Judge Fudge, sitting in the Luton and South Bedfordshire Magistrates' Court, refused an application by a company called Chopstix Trading Limited ("Chopstix") for a declaration that summonses issued and served on it were invalid, thereby removing the court's jurisdiction to try them. This was an interlocutory decision by the district judge. Nonetheless, Chopstix has permission to apply for judicial review of that decision, permission having been granted by Kavanagh J on 14 June 2022.
- 3 As is customary, the Magistrates' Court has taken no part in these proceedings. Chopstix is represented by Mr Ian Thomas; Mr Andrew Johnson represents Luton Borough Council ("the Council"). Both counsel appeared in the court below and we are very grateful to both of them for their written and oral submissions;
- 4 The application provides the court with a further opportunity to consider the meaning and ambit of the Criminal Procedure Rules 7.2(3)(b)(i). This rule was considered by this court in *Food Standards Agency v Bakers of Nailsea Limited* [2020] EWHC 3632 (Admin) ("*Bakers of Nailsea*") and in *London Borough of Barking & Dagenham v Argos Limited* [2022] EWHC 1398 (Admin) ("*Argos*"). We must consider the effect of those decisions in the light of the facts in this case.
- 5 The relevant chronology of the proceedings was not and is not in dispute. The district judge set it out at para.4 of her written judgment. We gratefully adopt and repeat that chronology:
  - a) Chopstix faced three separate summonses for alleged offences contrary to Regulation 19 of the Food Safety & Hygiene (England) Regulations 2013 ("Regulation 19"). The prosecutor was Luton Borough Council ("the Council").
  - b) Each of the three offences were alleged to have occurred on 21 January 2020.
  - c) By Regulation 18 of the Food Safety & Hygiene (England) Regulations 2013 ("Regulation 18") "no prosecution for an offence under those Regulations which is punishable under Regulation 19 shall be begun after the expiry of 3 years from the commission of the offence or 1 year from its discovery by the prosecutor, whichever is the earlier".
  - d) The time limit for the prosecution of the alleged offences against Chopstix was, as a matter of fact, 20 January 2021.
  - e) An application for summonses was sent by the Council to the Magistrates' Court by email dated 14 January 2021, the material part of which read: "Please find attached summons for issue in relation to the above defendant. We would be grateful if it could be signed as soon as possible to enable service on the defendants in time before the hearing on 11 March 2021."

- f) There was no reference to any time limit for the prosecution of the alleged offences within the email seeking the summonses from the court.
- g) On 19 January 2021, the Council sent a further email about the same summonses which simply read, "Please can I have an update on the above summons."
- h) There was no reference within the second email to any time limit for the prosecution of the alleged offences.
- i) On 25 January 2021, the court issued the summonses, duly signed, back to the Council via email.
- j) On 1 February 2021, the Council sent a further email to the court in which it highlighted the fact that an incorrect date had been written on the summonses, no issue being taken on this point. Thereafter, in the same email the Council wrote: "The offence is alleged to have taken place on 21 January 2020 and there is a 1-year time limit to lay the charge and therefore the date of 25 January 2021 the court have put erroneously renders these charges out of time."
- k) The time limit was mentioned the first time within this email sent on 1 February 2021, which was outside the 1-year time limit for the prosecution of the offences.
- l) The summonses were amended and returned to the Council with the correct date on that same day, 1 February 2021.
- m) Those summonses were subsequently served upon Chopstix.

6 Part 7 of the Criminal Procedure Rules is headed "Starting a prosecution in a Magistrates' Court". CPR 7.2 deals with application for a summons. When a prosecutor wants the court to issue a summons this can be done by serving on the court a written application (see CPR 7.2(1)(a)). CPR 7.2(3) is as follows:

"An application for the issue of a summons or warrant must

- 1) set out the allegation/allegations made by the applicant in terms that comply with r.7.3(1) (allegation of offence in application or charge) and
- 2) demonstrate
  - i. that the application is made in time, if legislation imposes a time limit and
  - ii. that the applicant has the necessary consent if legislation requires it."

7 Section 1 of the Magistrates' Court Act 1980 speaks of "an information being laid" rather than "an application is made". Since we are concerned with the operation of the rule we shall refer to "an application" throughout.

- 8 The issue in this case, as it was to a greater or lesser extent in the *Bakers of Nailsea* and *Argos* cases, is what has to be done in order to comply with CPR 7.2(3)(b)(i) and what the consequence will be if there is non-compliance with the rule. The district judge found that the Council had not complied with the rule. She concluded that the Council's application had not demonstrated that it was made within the relevant time limit. It said nothing on its face about such time limit. She relied to a substantial extent on the decision in *Bakers of Nailsea* in reaching that conclusion. She went on to determine the consequence of the failure to comply with the rule. She found that what had occurred was a procedural failure. This did not invalidate the summonses or deprive the court of jurisdiction to try the alleged offences.
- 9 Chopstix supports the district judge's finding that there was non-compliance with the rule. It argues that the consequence of that ought to have been a finding that the court had no jurisdiction to try the case and that the district judge was in error in concluding that the proceedings could continue. The Council does not criticise the district judge for relying on *Bakers of Nailsea*. It was a decision of this court which was binding on her. At the time of her judgment she was bound to find as she did in relation to the issue of compliance. However, the Council says that *Argos* explained the operation of CPR 7.2(3)(b)(i) in such a way as to show that *Bakers of Nailsea* was wrongly decided. The correct position is that the Council did comply with the rule. Insofar as is necessary, the Council supports the reasoning of the district judge in relation to the consequences of any non-compliance.
- 10 The history and operation of the rule with which we are concerned and the consideration thereof in *Bakers of Nailsea* was considered at considerable length in the judgment of Edis LJ in *Argos*. It will not assist the parties in this case or anyone else interested in the rule and its ambit for us to cover the same ground as was traversed by Edis LJ. We are satisfied that his analysis of the rule and its effect was entirely correct. Insofar as anything said in *Bakers of Nailsea* conflicts with his analysis, we are sure that the approach in *Argos* is to be preferred. In reality, as Edis LJ explained, what was said in *Bakers of Nailsea* in relation to compliance was unnecessary to the decision in that case. Thus, the observations in *Bakers of Nailsea* were *obiter dicta*.
- 11 In relation to compliance with the rule, it is not necessary for the application to state explicitly what the time limit is where legislation imposes such a limit in order for the application to demonstrate that it is in time. The application for a summons is directed to the court. So long as the court can glean for the application information necessary to establish whether the application is in time there will be compliance with the rule. That much is clear from the judgment of Edis LJ at para.38 and 39 of *Argos*. *Argos* was concerned with the offence of selling a knife to a person under 18. This is an offence set out in s.141A of the Criminal Justice Act 1988. It is a summary only offence. Thus, s.127 of the 1980 Act applied to the offence. There was a 6-month time limit for the laying of an information running from the time when the offence was committed. Edis LJ concluded that whenever an application was made for a summons in respect of a summary only offence to which s.127 applied, it was sufficient for the application to state the date of the offence for it to be demonstrated that the application was made in time. All Magistrates' Courts can be taken to know about s.127 of the 1980 Act. They might not be immediately aware that the offence under s.141A of the 1988 Act was summary only but "this information is readily available". Edis LJ left open the question of what would need to be on the face of an application where a more complex time limit applied. That was because the issue did not arise on the facts in *Argos*. At para.28 of *Argos* he said that: "Any authoritative status with which that decision in *Bakers of Nailsea* may retain should be strictly confined to that context." We acknowledge that the context of *Bakers of Nailsea* was an alleged breach of Regulation 19. However, the rationale in *Argos* must be of general application. The issue is

what the application will demonstrate on its face to the court, taking into account the court will know about any time limits provided by the statutory provisions creating the offence in question.

- 12 In this case, the effect of the time limits in Regulation 18, as set out by the district judge, was that any prosecution commenced within 1 year of commission of the offence inevitably will have been commenced in time. That is because the period of 1 year is the earlier of the two periods referred to in Regulation 18. The time limit for an offence under Regulation 19 could not be less than 1 year, whatever the circumstances. As the court was able to identify that from the application, the application in this case was within time. That was demonstrated by the detail given in the application. On the facts of this case, the time limits applicable to Regulation 19 were no more complex than the ordinary summary only offences governed by s.127 of the 1980 Act.
- 13 Just as it was not necessary for Edis LJ to express a view on how applications in relation to offences outside the ambit of s.127 of the 1980 Act should be drafted, it is not necessary for us to consider the position where the application is made more than a year after the alleged commission of the offence, but is said to be in time because the offence had not been discovered by the prosecutor and the application is within 3 years of the commission of the offence.
- 14 In his written submissions, Mr Johnson argued that were that to be the position a prosecutor could comply with the rule by serving a case summary with the application which made it clear when the offence was discovered. It might reasonably be asked why the prosecutor would do this to comply with the rule when it would be far easier simply to give the date on the face of the application. However, we emphasise that this is not the situation with which we are concerned. On the facts of this case, we are satisfied that there was compliance with the rule.
- 15 It follows that the district judge's decision was wrong on that point, albeit for reasons beyond her control. Strictly, it is unnecessary for us to consider the consequence of a failure to comply with the rule. Nonetheless, we have heard full argument on the topic and we evince an intention to create binding authority in relation to consequence even where the time limits are not as straightforward as they were in *Argos*. As with the issue of non-compliance, Edis LJ, in *Argos*, left open the question of whether failure to comply with the rule in cases of more complex time limits would render the summons subsequently issued a nullity. He said that it would never do so in cases governed by s.127 of the 1980 Act. In our judgment, the same reasoning should apply *mutatis mutandis* in the circumstances which applied here. Any application made within a year in relation to a Regulation 19 offence inevitably will have been made in time. There is no reason to distinguish those circumstances from a case in which s.127 of the 1980 applies.
- 16 Edis LJ explained in some detail his reasoning in relation to the consequence of non-compliance, assuming it arose, at para.47 to 58 of *Argos*. We respectfully adopt that reasoning. He did not consider the impact of the judgment of the Court of Appeal Criminal Division in *R v Lalchan* [2022] QB 680. Although that judgment was handed down prior to the handing of the judgment in *Argos*, *Lalchan* had not been published at the time of the hearing in *Argos*. Mr Thomas places significant reliance on the conclusions in *Lalchan*, so we must address the point.
- 17 *Lalchan* related to an offence under a part of the Public Order Act 1986 ("the 1986 Act"). Section 27 of the 1986 Act provides that no proceedings for that offence may be instituted except by or with the consent of the Attorney General. No such consent had been given in

the appellant's case. The error was only noted after he had been convicted. At that point, the Attorney General purported to give her consent. The Court of Appeal rejected the argument that the failure to comply with s.27 of the 1986 Act did not affect the court's jurisdiction to try the appellant. The court said it was necessary to consider what the intention of Parliament should be taken to have been in the event of such a failure. That required consideration of the language, purpose and history of the legislative provision in question. In the context of the requirement to have the consent of the Attorney General, it was clear that such consent was needed for the proceedings to be valid. We should observe that the argument put by the prosecution in *Lalchan* was bold. The conclusion of the court was wholly unsurprising, given the weight of prior authority against the argument being put.

- 18 Mr Thomas relies on the principles in *Lalchan*. With respect to him, we do not consider that the circumstances of this case are the same as in *Lalchan*, which concerned Parliament's intention in primary legislation. CPR 7.2(3) is a rule implemented by the Criminal Procedure Rule Committee. Absent clear indication to the contrary, such a rule cannot remove jurisdiction, in this case from the Magistrates' Court. The power to issue a summons comes from primary legislation, namely, s.1 of the 1980 Act. The jurisdiction to begin a prosecution for an offence contrary to Regulation 19 is established by Regulation 18. If a prosecution has begun in accordance with Regulation 18, the court will have jurisdiction to try the offence.
- 19 Section 69 of the Courts Act 2003 makes provision for the Criminal Procedure Rules. Such rules are to be made "with a view to securing that the criminal justice system is accessible, fair and efficient" (see s.69(4)). That is the purpose of CPR 7.2(3). It is intended to ensure efficiency in the process of issuing a summons. In our judgment, on no sensible reading can it be said to create a jurisdictional requirement.
- 20 It follows that we reject the submissions made on behalf of Chopstix on this issue. We do not agree, for the reasons given in *Argos*, that failure to comply with the rule means that the court could not issue a valid summons and that it lacked jurisdiction. The rule is procedural. It cannot be used to deprive the court of jurisdiction.
- 21 We do not accept the subsidiary argument based on the supposed intention of the rule. In our view, that is simply a variation on the jurisdiction point.
- 22 The final proposition put forward by Chopstix is that the interests of justice militated against the summons being valid. The district judge considered that proposition at para.16 of her judgment. She found there had been no identifiable prejudice to Chopstix and the balance of justice favoured the prosecution of the alleged offences.
- 23 For all those reasons, we dismiss the application for judicial review. The district judge was right to require the proceedings to continue, both for the reasons she gave and because we are satisfied that there was compliance with CPR 7.2(3).

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by Opus 2 International Limited  
Official Court Reporters and Audio Transcribers*

*5 New Street Square, London, EC4A 3BF*

*Tel: 020 7831 5627 Fax: 020 7831 7737*

**CACD.ACO@opus2.digital**

This transcript has been approved by the Judge.