Neutral Citation Number: [2024] EWHC 1493 (Admin)

Case No: AC-2024-LON-000372

IN THE HIGH COURT OF JUSTICE
OF ENGLAND AND WALES
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
The Strand
London, WC2A 2LL

Monday 17 June 2024

Before :

LORD JUSTICE SINGH
MRS JUSTICE COCKERILL

- -

Between :

ROSS GRIER **Appellant**

- and -

DIRECTOR OF PUBLIC PROSECUTIONS (DPP) **Respondent**

- -
- -

Josh Bibby (instructed by **Hennessy and Hammudi**) for the **Appellant**
Simon Ray (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 6 June 2024

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APPROVED JUDGMENT

This judgment was handed down remotely by the judge and circulated to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Monday 17 June 2024 at 10:00am.

Mrs Justice Cockerill:

INTRODUCTION

1. This is the judgment of the Court.

2. This is an appeal by way of case stated from District Judge Verghis sitting in the Magistrates' Court on 30 November 2023. The issue relates to the admissibility under s.78 Police and Criminal Evidence Act 1984 ("PACE") of identification evidence of an eye-witness police officer in circumstances where no "identification procedure" under PACE Code D, Code of Practice for the Identification of Persons by Police Officers ("Code D") took place. That question has two parts:

    i) Whether the absence of an identification procedure constituted a breach of Code D;

    ii) Whether if so the police officer's identification evidence should have been excluded under s. 78 in all the circumstances.

3. There is also an issue as to timing, since the Appellant's documents were served late.

FACTUAL BACKGROUND

4. On 29 March 2023 at 22:57 PC 3595 Adam Price ("PC Price") was on duty in full uniform driving an unmarked police vehicle with a colleague. He became aware of a Nissan Qashqai vehicle, ("the Nissan") in a BP petrol station forecourt on Wokingham Road in Early which was of interest to the police.

5. PC Price drove onto the forecourt of the petrol station to one of the petrol pumps under the canopy. The Nissan was approximately one metre away, on the other side of the same pump. It was dark and drizzling, but the lighting at the petrol station under the canopy was good and PC Price's view was unobstructed.

6. PC Price observed the driver for about 15 seconds as a white male with distinctive curly ginger style hair on the top of his head. PC Price also noted that the driver appeared to be paying close attention to the police vehicle.

7. PC Price ran a check on the Nissan which showed that there was no registered keeper on record for the Nissan, but there was an insurance policy in place held by the Appellant.

8. Another male got into the Nissan which was driven off the forecourt onto Wokingham Road. PC Price followed the Nissan and attempted to stop it by illuminating his blue lights. The Nissan sped away; in pursuit PC Price noted that the Nissan was travelling at 43 mph rising to 70 mph in a 30mph limit. The Nissan went through a red traffic light and pulled into the path of a Toyota Prius vehicle which had to brake harshly to avoid collision.

9. PC Price then lost sight of the Nissan, which was found later with its engine running and damaged, outside Poacher's Pub on Mill Lane house. A search for the driver was unsuccessful.

10. That night PC Price returned to the police station and started to write-up his note of the incident. He did not however complete this task at this point.

11. The next day, on 30 March 2023, there were enquiries by the Appellant and the Appellant's mother seeking the return of the Nissan. In response to those enquiries, PC Price agreed to meet the Appellant at Loddon Valley Police Station. Immediately when the Appellant arrived at the Police Station and met PC Price, PC Price was sure that he recognised the Appellant as the driver. So sure was he that within five minutes he had arrested him.

12. PC Price subsequently interviewed the Appellant in the presence of a solicitor, and the Appellant answered "no comment" to all questions.

13. After completing the interview he completed his notes of the encounter the previous night.

14. The Appellant was charged, as follows:

> "On 29 March 2023, at Lower Early in the County of Berkshire drove a mechanically propelled vehicle ... on a road, namely Rushey Way plus adjoining roads without due care and attention, Contrary to S.3 Road Traffic act 1988 and schedule 2 Road Traffic Offenders Act 1988;
>
> On 29 March 2023, at Lower Early in the County of Berkshire drove a mechanically propelled vehicle ... on a road, namely Rushey Way plus adjoining roads, failed to stop the vehicle when required to do so by a Constable in uniform, Contrary to s.163 Road Traffic act 1988 and schedule 2 Road Traffic Offenders Act 1988."

15. On 31 March 2023, the Appellant appeared in custody at Reading Magistrates' Court and pleaded not guilty to both charges. In the case management section of the Preparation for Effective Trial form, in answer to the standard questions, the box was marked that it was "disputed" that "*the defendant was present at the scene of the offence alleged*"; that it was "disputed" that "*the defendant [carried out] [took part in] the conduct alleged [drove the vehicle involved]*"; and "disputed" that "*the defendant was correctly identified*". In response to the question, "*What are the real issues in this case?*" someone had recorded that, "*The defendant denies being the driver*". A Defence Statement was served in June which made clear that identification was disputed.

16. On 14 July 2023 the case was tried in front of District Judge Verghis sitting in Reading Magistrates' Court. The Prosecution called PC Price as a witness and relied on his identification evidence. The judge notes in the case stated that it was never put to PC Price in cross-examination that the Appellant was not the driver of the Nissan.

17. At the close of the prosecution case the defence made a submission of no case to answer. The Defence submitted that PC Price's identification evidence was flawed as it lacked detail as to initial observations and he did not complete his notes until after he had arrested the Applicant on 30 March 2023. Further, it was contended that the Police

were under a duty in the circumstances to hold an identification parade in accordance with Code D. Accordingly, it was submitted that the identification evidence should be excluded under s. 78 PACE.

18. The District Judge having found a case to answer, the Defence did not call the Appellant to give evidence. The Defence relied on essentially the same arguments in closing. The Prosecution submitted that PC Price's identification evidence was corroborated by evidence of the Appellant's insurance of the Nissan and the Appellant's intention to retrieve the vehicle within 24 hours of the incident. They also invited the judge to draw an adverse inference from the Appellant's failure to give evidence in his defence.

19. On 18 July 2023 at Slough Magistrates' Court District Judge Verghis gave her verdict orally. She found the Appellant guilty on both charges. After hearing mitigation evidence on behalf of the Appellant, DJ Verghis sentenced the Appellant for the offence of driving without due care and attention to a fine of £750, a surcharge of £300, costs of £775, and a discretionary disqualification from driving of 12 months pursuant to S.34(2) Road Traffic Offenders Act 1988. No separate penalty was imposed for the non-endorsable offence of failing to stop when required to do so by a police officer in uniform.

20. DJ Verghis directed that Reading Crown Court should be notified of the convictions as the Appellant had previously been placed on a 24-month suspended sentence order on 16 March 2023 in respect of two offences of possession of class A drugs with intent to supply.

21. On 30 November 2023 DJ Verghis decided to state a case for the opinion of the High Court on the following question of law:

> **"Was I as the District Judge correct not to exclude the identification evidence of PC Price under s. 78 of PACE?"**

22. The decision to state a case by the magistrates' court was served on the Appellant and the CPS on 22 January 2024. The Appellant filed the Appellant's Notice at the High Court on 2 February 2024, a day after the applicable 10-day time limit set out in CPR Practice Direction 52E paragraph 2.2, without filing an application for an extension of time.

23. On 5 February 2024 the case was issued by the High Court. The Appellant served the case and the Appellant's Notice on the CPS on 16 February 2024.

THE LAW

24. Section 78 of PACE 1984 states:

> "(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court

> ought not to admit it. (2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence."

25. Although on its face section 78 confers a discretion, the true position was explained by the Court of Appeal (Criminal Division) as follows in *R v Twigg* [2019] 1 WLR 6533, at [42]-[43]:

> "42. The function of a judge under section 78 of PACE is often described as being the exercise of a 'discretion'. That is how it was described in the present case. This is consistent with the use of the word 'may' in section 78 itself. However, as Auld LJ observed in *R v Chalkley* [1998] QC 848, 874, strictly speaking section 78(1) does not involve a discretion because, if a court decided that admission of the evidence in question would have such an adverse effect on the fairness of the proceedings that it ought not to admit it, it cannot logically exercise a discretion to admit it. Indeed, this position can only have been reinforced by the coming into force of the Human Rights Act 1998 ('HRA').
>
> 43. The right to a fair trial is one of the rights enshrined in article 6 of the ECHR set out in Schedule 1 to the HRA; and section 6(1) of the HRA makes it unlawful for any public authority to act in a way which is incompatible with a Convention right. A public authority includes not only the police, the prosecution but also a court: see section 6(3)(a). In circumstances therefore where there would be an unfair trial that is unlawful under section 6(1) of the HRA. To that extent it is not appropriate to refer to there being a 'discretion' since it is not possible in law to admit evidence which would render a trial unfair." (Singh LJ)

26. Nonetheless, although the terminology of "discretion" is not apt, the consequence of the evaluative, judgment-based nature of the decision is that it is one with which this court will not lightly interfere. The role of an appellate court was explained as follows in *R v Bogie* [2023] EWCA Crim 1280, at [56]:

> "… when considering an appeal from the decision of the trial judge, in particular when there have been breaches of the codes under PACE, this Court would have to be satisfied that no reasonable judge, having heard the evidence, could have reached the conclusion that he did: see *R v Quinn* [1995] 1 Cr App R 480, at 489 (Lord Taylor CJ); and *R v Dures (Thomas)* [1997] 2 Cr App R 247, at 261-262 (Rose LJ)." (Singh LJ)

27. We were referred principally to three authorities: *R v Nunes* [2001] EWCA Crim 2283, *R v Gojra* [2010] EWCA Crim 1939, and *R v Fergus* [1992] Crim. L.R. 363.

28. In *Nunes* a police officer attended a burglary in progress, saw a man inside the building, circulated a description, and then later an area search took place in which other officers detained a suspect matching the description and placed him under arrest. The officer attended shortly after this - and before the suspect was placed in a police van, and identified the suspect as the one he had seen committing the burglary. The Court of Appeal held that this was a breach of PACE Code D because the defendant was a known suspect and therefore a proper identification procedure should have taken place.

At [20-22] the Court reviewed Lord Bingham's speech in *R v Forbes* [2001] 1 AC 473 where he emphasised the practical nature of the Code and the need to read it as meaning what it says. At [22-23] it stated:

> "…as Lord Bingham points out at page 13 of the report in *Forbes*, in the absence of exceptional circumstances of which he gives certain examples, the effect of paragraph D:2.3 is clear and mandatory….
>
> What *Forbes* demonstrates is that in those cases to which the relevant provisions of the Code apply, the holding of an identity parade is not optional. It is, from the point of view of the police, mandatory. The choice whether an identification parade takes place lies not with the police but with the suspect. We would suggest that that is just as it should be."

29. *Gojra* was relied on for the proposition that identity does not need to have been raised as an issue on arrest or during interview for the police to have been under a duty to consider it. However, that is not a proposition which is actually to be found in the case itself. That was a case where an identification procedure was held in respect of one witness but not another and it was argued that identity was not in issue until the defence statement was served. The Court disagreed at [72]:

> "We have no difficulty concluding that Haq should have been invited to an ID procedure. We do not consider that the formality of the service of Gojra's Defence Statement was the moment critique for the realisation that identity was in issue. It must have been apparent to the police long before then, and at the latest at a bail application presented by leading counsel long before the trial and well in advance of the service of Gojra's Defence Statement."

30. *Fergus* was cited to us by way of analogy. While there was no relevant statement of principle it was submitted that the facts were a useful parallel to the present case. In that case it was held that a formal identification parade or confrontation ought to have been held in a case where the witness had only seen the suspect once before and had been told the suspect's name as hearsay by a third party.

THE PARTIES' SUBMISSIONS

31. The Appellant (via Mr Bibby who appeared below and for whose clear and focussed submissions we are most grateful), submits that PC Price's evidence breached the applicable 2017 version of Code D as, at the time of being invited to the Police Station by PC Price, the Appellant was a known, named suspect (indeed the only known suspect) and it would have been practicable for another officer to have met the Appellant at the police station, effected the arrest, and arranged an identification parade. It was submitted that paragraph 3.12 of the Code confirms that this is a circumstance "*...in which an eye-witness identification procedure must be held*".

32. The Appellant further submits that the breach of a mandatory provision of Code D, combined with the fact that PC Price's statement was written in two stages - and not completed until after having arrested and interviewed the Appellant -increases the likelihood that it was tainted with confirmation bias.

33. The Appellant relies also on a passage of the judgment in *R v Nunes* [2001] EWCA Crim 2283; [2001] All ER (D) 445 (Oct) and the speech of Lord Bingham in *R v Forbes* [2000] UKHL 66, [2001] 1 AC 473. He contends that these confirm the mandatory duty on the police to hold an identification procedure in these circumstances. In relation to *Gojra* it was submitted that that case makes it quite clear that the issue of identity does not need to be raised on arrest or in interview for the police to be under a duty. It was also submitted that [32] of the case stated, where the District Judge emphasised the failure to raise the point in interview, shows that there had been insufficient consideration of *Gojra.*

34. On this basis it is said that as the admission of the evidence would have had such an adverse effect on the fairness of the proceedings, DJ Verghis erred in refusing the Appellant's s. 78 PACE application. The essence of the submission was that absent ID evidence there could be only one decision (acquittal); hence the answer to the question as to undue prejudice was wrong in law.

35. The Respondent, via Mr Ray's helpful and concise submissions, contends that the holding of an identification procedure is not mandatory in these circumstances and there was no breach of Code D. It contends that on the correct interpretation of the 2017 iteration of Code D the obligation to hold an identification procedure would only arise after the police became aware that there was a dispute concerning identification (either at the Appellant's first appearance in Reading Magistrates' Court on 31 March 2023 or later at trial). At that point any such procedure would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence.

36. Secondly, the Respondent submits that DJ Verghis correctly held that if there were a breach of Code D, admitting the evidence would not have caused any significant prejudice to the Appellant after assessing the quality of PC Price's identification evidence with reference to the *Turnbull* criteria noting the identification evidence was supported by important corroborative evidence that (i) the Appellant insured the vehicle in question, and (ii) the Appellant intended to retrieve the vehicle within 24 hours of the incident.

37. Accordingly, the Respondent says that DJ Verghis correctly dismissed the Appellant's application under s. 78 PACE.

DISCUSSION

Breach of Code D?

38. The first issue, as to the existence of a breach of Code D, depends in part on the extent to which the reasoning in *Nunes* is capable of being transposed to this case in the light of the facts that (i) that case was decided in 2001 (ii) Code D has undergone a number of changes in the intervening years and (iii) the extent to which the different facts are relevant.

39. On the first point, the Respondent (by reference to paragraph 14-40 of Archbold Criminal Practice 2024) explains:

i) A revision of Code D occurred on 10 April 1995 (Police and Criminal Evidence Act 1984 (Codes of Practice) (No.3) Order 1995 (SI 1995/450)), to create the version of Code D considered by the House of Lords in *Forbes*, and *Nunes*;

ii) The first post-*Forbes* revision occurred on 1 April 2003 (by the Police and Criminal Evidence Act 1984 (Codes of Practice) (Codes B to E) (No.2) Order 2003 (SI 2003/703));

iii) The relevant version of Code D came into force in 2017 (on 23 February 2017 by Police and Criminal Evidence Act 1984 (Codes of Practice) (Revision of Codes C, D and H) Order 2017 (SI 2017/103));

iv) The most recent revision was on 20 December 2023.

40. Although the Respondent has urged caution in relation to "reading across" from the analysis in *Nunes,* what this comparison demonstrates is that while the wording and structure of the relevant parts of the Code (2.3 or 3.12) have changed considerably in the intervening years, both versions state clearly essentially the same point: an identification parade is mandatory if a suspect disputes identification.

41. It is not the case, as the Appellant submits, that it is mandatory to hold an identification procedure in all cases where a person is a known named suspect. That might be suggested by the wording of paragraph 3.4 of Code D (though that is not the provision on which the Appellant relied). But that paragraph relates to methods for identifications procedures of known available suspects; it is 3.12 which sets out when such identification is mandatory. That paragraph on its plain words imposes the requirement subject to a condition: that there be an issue as to identification, though that condition is phrased slightly differently across the two versions. The point is thus clear on the wording.

42. It is also clear as a matter of logic and common sense. The logical corollary of the Appellant's argument would be to require the police to conduct identification procedures even if identification was not and was never going to be in issue. That would plainly be nonsensical, serving only to waste valuable police time and resources. Mr Bibby's attempt to get round this difficulty was to contend that the obligation arises in the kind of case where it was inevitable that identification would be in issue. But this is both unworkable (effectively as the obverse of the point made at [20(4)] of *Forbes)*, and not what the relevant part of the Code says. Here we refer back to what Lord Bingham said in *Forbes:*

> "Code D is intended to be an intensely practical document, giving police officers clear instructions on the approach that they should follow in specified circumstances. It is not old-fashioned literalism but sound interpretation to read the Code as meaning what it says."

43. The focus is therefore on the question of what constitutes disputing identity. In *Nunes* there was a disputed identification at the relevant point because, in the words of [19] of the judgment:

> "On his apprehension the appellant immediately said that he had not done anything, whereas the police officers told him that he matched the description of a person suspected of having committed burglary. This

> occurred before the arrival of PC Benke. Matters had therefore by the arrival of PC Benke already developed to a point at which it could properly be said that this was a case which involved disputed identification evidence. The appellant was already disputing that he had been properly identified as a person recently observed committing a crime."

44. In the present case, however, the facts were rather different. PC Price was the person who met the Appellant on his arrival at the police station. It is agreed that the Appellant said nothing before this point to indicate that he was disputing identity. PC Price immediately made the identification and arrested the Appellant.

45. This raises the point about whether *Gojra* is indeed authority for the proposition that identity does not need to have been raised as an issue on arrest or during interview for the police to have been under a duty to consider it.

46. As indicated above that is not what was decided in *Gojra*. In that case the prosecution wished to pin the dispute as to identity to a time adjacent to trial. That was rejected. There was no determination that the dispute had been made before or on arrival at the police station. The Court rather said that: "*It must have been apparent to the police ... at the latest at a bail application presented by leading counsel*".

47. That seems to us not to set down any rule as to a necessity for the police to assume an identity dispute, but rather to reflect the fact-sensitive nature of the wording used in Code D: "*an identification procedure shall be held if the suspect disputes being the person the eye-witness claims to have seen on a previous occasion.*"

48. It follows then that for the obligation to conduct an identification process to be triggered at the very least the suspect must dispute identity – and when that happens may well depend on the facts. We do not by any means say that the dispute must be by way of a formal or even an express statement. The dispute may be one which is made plain in some other way – which is something which is to be inferred from all the circumstances. For example, a defendant might put forward a case which was inconsistent with him being the person suspected; so a person in Mr Grier's position might dispute being the driver by ringing the police and telling them that his car was stolen before the time in question.

49. In a case such as this it may or may not be the case that identity is in dispute prior to an interview or arrest, such that an obligation to hold an identification procedure could arise. That is essentially what happened in *Nunes*.

> "On his apprehension the appellant immediately said that he had not done anything, whereas the police officers told him that he matched the description of a person suspected of having committed burglary. This occurred before the arrival of PC Benke."

50. But *Nunes* also makes clear that it was not setting down a general rule. On the contrary:

> "In many if not most such cases whilst it might be possible at the moment of identification to say of the person identified that he is a known suspect it is unlikely that matters will have developed to a point at which it can also be said that it is a case which involves disputed identification evidence. In most cases of this sort there is unlikely to be disputed identification

> evidence until such time as the disputed identification has taken place.... In many such cases it would be simply unreal to think that police officers should be prevented from expressing their belief that the appropriate person had been apprehended, and juries would surely be surprised to be told that such conduct was a breach of the Code governing police behaviour."

51. In this case in particular there is nothing in the material before us which could provide a factual basis upon which it could properly be said that "*the suspect disputes being the person the eye witness claims to have seen*" so as to make this case analogous with *Nunes* and engage paragraph 3.12 of Code D. There is no evidence to suggest that the backdrop to the Appellant's arrival had included any dispute about who was driving the car prior to it being abandoned or any volunteering by him of a case that he had not been driving. As the District Judge noted at [32] of the case stated, the Appellant did not dispute the identification on arrest. He did not dispute the identification in interview, choosing instead to give a full no comment interview.

52. While there is no obligation to give answers when questioned by the police (see for example, *Rice v Connolly* [1966] 2 QB 414, per Lord Parker CJ at 419F "*It seems to me quite clear that though every citizen has a moral duty or, if you like, a social duty to assist the police, there is no legal duty to that effect, and indeed the whole basis of the common law is the right of the individual to refuse to answer questions put to him by persons in authority...*") the question of whether the Code is engaged is a separate question. The Appellant had more than one opportunity to make identity an issue before his arrest or at his interview; but in fact it is accepted that nothing proceeded from him to do so until the Magistrates' Court hearing the day after the interview.

53. We therefore accept the Respondent's submission that on the facts of this case, there was no requirement under Code D to hold a formal identification procedure.

54. The next question is whether there was a breach of Code D by failing to conduct an identification procedure after the pre-trial hearing. This was not suggested by the Appellant in his skeleton; and rightly so. While *prima facie* an obligation to conduct such a procedure would be engaged by the identification being disputed, we entirely accept the Respondent's submission that at this stage the exceptions in 3.12 would be engaged – in particular the process would have served no useful purpose. It would have been artificial given that it was inevitable at this stage that PC Price, having by now spent a good deal of time with Mr Grier, would have confirmed his earlier identification of the appellant. In this respect the situation is quite distinct from that which pertained in *Gojra* where the Court took the view that there was a dispute as to identity by the time the bail application was made – at which point it would not have been too late for the (non-police) witness in question to be asked to make an identification.

55. Accordingly we conclude that there was no breach of Code D.

Prejudice if a breach did occur?

56. The starting point here is the high bar for any challenge on an appeal to the evaluative judgment of the trial judge to which we have alluded at [27] above.

57. The Appellant's submissions on this aspect rest on what is said to be the centrality of that identification evidence to the conviction at trial. In those circumstances it is said

that not only is the test under s. 78 is met (i.e. that it would have "*such an adverse effect on the fairness of the proceedings that the court ought not to admit it*") but also that because of the degree of prejudice caused there could only be one right answer.

58. The reason why admission of the evidence (subject, as it was, to an appropriate *Turnbull* self-direction) and with the Appellant being afforded an opportunity to challenge the evidence, should be so unfair did not emerge particularly clearly from the written argument.

59. It was suggested that the fact that PC Price's statement was completed after having arrested the defendant and interviewed him makes it more likely that his identification evidence was tainted by confirmation bias. That does not, in our judgment, follow. The late completion of the notes might tend to ensure that there was confirmation bias in those notes (i.e. that they would tend to conform to his observations over the more protracted period) but says nothing about the prior identification.

60. The gravamen of the real argument was that the identification evidence was the only real evidence and that without it there could only ever have been an acquittal. However, in our judgment it is not fair to say that the identification stood alone – as the District Judge rightly noted, the Appellant was plainly the person most closely linked to the car in that he was the policy holder for the insurance on it (presumably on the basis that he was its owner). He had positively asserted his right to the car by contacting the police to arrange its retrieval. Not only did the Appellant not test PC Price's evidence, he chose not to give an account of where he was, if he were not driving the car as alleged.

61. Given the nature of the review which we must perform we conclude that even bearing in mind the importance of the safeguard of the identification process as noted in the authorities, the decision to admit is not a judgment where we can say the decision was one which was in error. It was not a case where only one outcome could reasonably be reached. It is indeed on a par with the position in *Nunes* where the court at [25] of the Judgment indicated that it would *'...have been a perfectly proper exercise of discretion to permit the identification evidence to be adduced notwithstanding the breach of the Code involved in the initial making of the identification'*.

62. Thus, even if there had been a breach of the Code, we would not have acceded to the submission that the District Judge erred in not excluding the evidence.

CONCLUSION

63. Accordingly the appeal is dismissed.

64. It follows that we need not deal with the issue of timing arising from the facts that:

    i) In breach of Practice Direction 52E, paragraph 2.2, the Appellant failed to file the appellant's notice at the High Court within ten days of the case stated by the magistrates' court;

    ii) In breach of Practice Direction 52E, paragraph 2.4, the Appellant failed to serve the appellant's notice and accompanying documents on all respondents within four days after they are filed or lodged with the court.

65. We do note that Mr Bibby gave us an explanation for these issues in particular as to late delivery by a courier and difficulties in assembling documents via DX, and we would not have been minded to exclude the case on this basis.