

Stall orders

Paul Tapsell considers the difference between street traders and pedlars

NUMEROUS LOCAL authorities have passed resolutions making sections of town centres 'prohibited streets' or 'consent streets' where street trading is either prohibited or prohibited without their consent pursuant to para 1 of Sched 4 to the Local Government (Miscellaneous Provisions) Act 1982. However, 'trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871' is not street trading within the meaning of the Act (along with eight other categories of non-trading set out at para 2), so can take place in a prohibited or consent street.

Definition of pedlar

Paragraph 10 of the same Schedule makes it an offence, inter alia, to engage in street trading in a designated prohibited street or in a consent street without the necessary consent. There is a statutory defence, under para 10(2), where a person has taken 'all reasonable precautions and exercised all due diligence to avoid commission of the offence'.

A pedlar is:

'any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, 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, or selling or offering for sale his skill in handicraft' (s 3 of the 1871 Act). 'A pedlar's certificate shall be granted to any person by the chief officer of police of the police district in which the person applying for a certificate has, during one month previous to such application, resided, on such officer being satisfied that the person is above 17 years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar'

and who pays the £12.25 fee (ss 5(1) and (3) of the 1871 Act).

It has been established that there is nothing to prevent a pedlar from travelling from town to town with a vehicle (or presumably beast bearing burden, subject to any animal cruelty issues) then going around on foot within that locality (see *Sample v Hulme* [1956] 1 WLR 1819).

The question arising in most street trading prosecutions is whether a person is acting as a bona fide pedlar. The leading authority is *Watson v Malloy* [1988] 1 WLR 1026 (QBD), where Hutchison J states at 1032E:

'If the distinction is to be encapsulated in an aphorism, one might say that a pedlar is one who trades as he travels as distinct from one who merely travels to trade. I do not mean that he must not stop. As Woolf LJ suggested during the argument, the chair mender stops in order to mend chairs: but the feature which makes him a pedlar is that he goes from place to place, mending a chair here and a chair there. He comes to the owners of distressed chairs, rather than setting up his stall and allowing them to come to him.'

The result was that Mr Molloy, who had been stationary and selling wrapping paper from a portable stand, was not acting as a bona fide pedlar.

Keep moving

Most contested street trading cases revolve around whether an individual is trading as he travels or not, which can be broken down to two issues: for how long was the trader stationary; and how far did he or she move in the relevant period. The information from the judgment in *Watson v Malloy* is simply that Mr Molloy was stationary for 'some part of the day'. More recently, the High Court has said that a trader who was stationary for 'at least an hour' was not acting as a bona fide pedlar (*Stevenage BC v Wright* (1996) *The Times*, 10 April), whereas one who was static for no longer than 20 minutes was (*Tunbridge Wells BC v Dunn* (1996) 95 LGR 775). Someone who moves a couple of steps every few minutes but remains in the same general location cannot properly claim to be acting as a pedlar (*South Tyneside MBC v Jackson* [1998] EHLR 249, following *Westminster CC v Elmasoglu* (unrep) CO/2289/95).

Stevenage BC v Wright provides authority for the proposition that, while the presence of a trolley or stall to carry and/or display goods for sale was not determinative whether a trader was a bona fide pedlar (whereas the presence of a beast of burden would be), 'the use of a stall or stand might indicate an intention to remain longer than was necessary to effect a sale to an individual' (see also *Shepway DC v Vincent* (unrep) CO/2836/93).

A more fundamental (but it seems unresolved) issue is whether a seller of hot dogs, roasted nuts, ice creams or similar is entitled to claim to be a pedlar. 'Sellers of vegetables, fish, fruit or victuals' are not required to obtain a pedlar's certificate (s 23(2) of the 1871 Act). If a trader does not need a pedlar's certificate to sell victuals, then surely he cannot be acting under the authority of one

Soft peddling

A bona fide pedlar can ply his trade regardless of the restrictions on street trading pursuant to Sched 4 of the Local Government (Miscellaneous Provisions) Act 1982.

A pedlar must go to his customers rather than allowing them to come to him.

A pedlar who remains stationary for less than 20 minutes is (probably) safe from prosecution.

It is not sufficient to shuffle a few feet every few minutes; a pedlar must travel from place to place, not remain in the same place.

'Reasonable' precautions are not usually a sufficient basis for the statutory defence under para 10(2) of Sched 4 of the Act.

when doing so. Without that authority, he must be street trading and, as mentioned above, it is clear that street trading in a prohibited street is prohibited. I would be grateful for details of any cases where this point has been argued.

Statutory defence

As to the defence under para 10(2) of Sched 4 to the 1982 Act, in *Watson v Malloy*, it was common ground that Mr Molloy was not the holder of a valid pedlar's certificate, although he had applied for one, his old one having expired. His argument that he had taken all reasonable precautions and exercised all due diligence by having applied for one was judged (by Hutchison J at 1029E) to be

'plainly unsustainable as it amounts to no more than an assertion that a person who erroneously believes that he is entitled to do that which is unlawful has taken all reasonable precautions and exercised all due diligence to avoid breaking the law. It is not even as though Mr Molloy had taken legal advice on the subject.'

The more recent case law makes clear that even taking legal advice will not suffice to discharge the burden placed on a trader. Mr Wright in *Stevenage* had spoken to police and local authority officers in other towns where he had been trading and believed that his usual practice was lawful and Mr Jackson in *South Shields* had sought and followed guidance and advice from the police and counsel; neither had done sufficient to avail themselves of the statutory defence.

'Generally speaking ignorance of the law, even on the part of a defendant who has made enquiries, is no defence' (Kennedy LJ in *Jackson* at p256).

Overall, the best advice to pedlars is to keep on the move. If you have to stop, cover your wares so that you are obviously not trading, and do not rely on legal advice ■

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