

Case No: CO/4226/2020  
Neutral Citation Number: [2021] EWHC 658 (Admin)

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**THE DIVISIONAL COURT**

Cardiff Civil Justice Centre  
2 Park Street  
Cardiff CF10 1ET

Tuesday, 23 February 2021

BEFORE:

**LORD JUSTICE DINGEMANS**  
**MRS JUSTICE STEYN DBE**

BETWEEN:

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**KEITH NEALE**

Appellant

- and -

**DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

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**MR T WAINWRIGHT** (instructed by Bindmans LLP) appeared on behalf of the Appellant

**MR L MABLY QC & MR J BOYD** appeared on behalf of the Respondent

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**JUDGMENT**  
(Approved)

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MRS JUSTICE STEYN:

***Introduction***

1. On 25 August 2020, at Newport Magistrates’ Court, the appellant was convicted by the justices of wilfully obstructing a constable in the execution of his duty, contrary to section 89(2) of the Police Act 1996. He appeals to this court by way of the case stated.
2. The wilful obstruction alleged in the charge against the appellant was his refusal to give his name and address to a police officer when the officer requested that information in order to issue a fixed penalty notice to the appellant, pursuant to the Health Protection (Coronavirus Restrictions) (Wales) Regulations (SI 2020/353) as amended and in force on 23 April 2020 (“the Coronavirus Regulations”).
3. The essential issue in the appeal is whether the appellant’s refusal to give his name and address to the police officer is capable of amounting to “wilful obstruction” for the purposes of section 89(2) of the Police Act 1996.
4. The justices acquitted the appellant on a separate charge that, on 23 April 2020, he left the place where he was living, and was in a public place, without a reasonable excuse for being outside of his home address, contrary to Regulations 8(1) and 12(1)(b) and (4) of the Coronavirus Regulations. They accepted his evidence that he was homeless, therefore Regulation 8(1) did not apply to him: see Regulation 8(4). In any event, they also found that he had a reasonable excuse for being in a public place because he had taken a vehicle belonging to a friend who was a key worker for an MOT that day.

***The case stated by the justices***

5. The justices have recorded the facts they found as follows:

“(a) On 23 April 2020, at the height of the coronavirus pandemic, the applicant was approached in Newport City Centre by police community support officers, PSCOs Norville and Llewellyn. At that date the Health Protection (Coronavirus Restrictions) (Wales) Regulations (2020/353) were in force, as amended by the Health Protection (Coronavirus Restrictions) (Wales) Amendment Regulations (2020/339).

(b) The applicant was asked numerous times to provide a reason as to why he was out in public and told that he was obliged to give the officers such a reason. The applicant declined to do so.

I The applicant was asked on a number of occasions to provide his name and address and declined to do so on each occasion.

(d) PCSO Norville requested assistance and PCs Lines and Wilkins attended the scene. PC Wilkins spoke with the applicant and asked for his name and address. The applicant refused to provide this information.

I The purpose of the police officers requesting the applicant's details was to enable a fixed penalty notice to be issued, as the applicant had failed to provide any reason for being outside his home and was therefore prima facie in breach of the Coronavirus Regulations.

(f) The applicant was arrested and taken to the police station.”

6. Before the justices, the appellant contended that he was under no legal duty to provide his name and address to the officers when requested to do so and so his refusal to answer did not amount to wilful obstruction of a police officer. In support of this contention, the appellant relied on *Rice v Connolly* [1966] 2 QB 414.
7. The justices rejected the appellant's submission of no case to answer and convicted him of wilfully obstructing a police officer in the lawful execution of his duty. They were of the opinion that:

(a) The police officer was carrying out his duties during lockdown enforcing the Coronavirus Regulations.

(b) The appellants made the job of the police officer who was trying to engage with him regarding a potential breach of the Coronavirus Regulations more difficult.

I *Rice v Connolly* should be distinguished. The justices were of the view that “the two cases were entirely different,” because in *Rice v Connolly* the appellant was going about his lawful business whereas: “In the present case,

having refused to provide a reason for not being at his home address, the applicant was prima facie in breach of the coronavirus regulations.”

(d) They considered that the purpose of the Coronavirus Regulations would be defeated and they would be inoperable if a person could avoid being issued a fixed penalty notice by refusing to provide his name or address. Therefore the justices considered it implicit in the Coronavirus Regulations that the appellant was obliged to provide these details to the officer when asked of him.

I The appellant chose not to comply with the instruction to provide his name and address intending to obstruct the officer in carrying out his duty under the Coronavirus Regulations.

8. The questions stated by the justices for the opinion of this court are:

“a) Did we err in distinguishing this case from *Rice v Connolly*?

b) In the absence of an explicit legislative provision requiring the applicant to provide his details to the police officer, did we err in finding the applicant guilty of wilfully obstructing a police officer in the execution of his duty?”

***The legislation***

9. Section 89(2) of the Police Act 1996 provides:

“Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale, or to both.”

10. At the time of the incident giving rise to these proceedings, regulation 8(1) of the Coronavirus Regulations provided, “during the emergency period, no person may leave the place where they are living without a reasonable excuse.” The emergency period was defined in regulation 3. Regulation 8(2) specified that “a reasonable excuse includes the need” to do the various acts identified in subparagraphs (a) to (m).

Regulation 8(4) provided “paragraph (1) does not apply to any person who is homeless.”

11. Regulation 10(2) provided:

“Where a relevant person considers that a person (“P”) is contravening the requirement in Regulation 8(1), the relevant person may

(a) Direct P to return to the place where P is living;

(b) Remove P to that place.”

A “relevant person” includes a constable or a police community support officer: see Regulation 10(11).

12. Regulation 12 provided:

“(1) a person who

...

(b) contravenes the requirement in regulation 8(1), commits an offence.

(2) a person who obstructs without reasonable excuse, any person carrying out a function under these Regulations commits an offence.”

13. Regulation 13 provided:

“(1) A relevant person may issue a fixed penalty notice to anyone that the relevant person reasonably believes, (a) has committed an offence under these Regulations, and (b) is aged 18 or over;

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to (a) a local authority, or (b) a person designated by the Welsh ministers for the purposes of receiving payment under this Regulation as the notice may specify.”

14. Regulation 13(5) provided that a fixed penalty notice must state or specify various matters. The name and address of the person issued with the notice is not expressly required, whereas the “name and address of the person to whom a fixed penalty may be

paid” must be stated: Regulation 13(5)(d). But the fixed penalty notice must “give reasonably detailed particulars of the circumstances alleged to constitute the offence.”

15. Section 24 of the Police and Criminal Evidence Act 1984 provides:

- “(1) A constable may arrest without a warrant—
- (a) anyone who is about to commit an offence;
  - (b) anyone who is in the act of committing an offence;
  - I anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
  - (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.
- (2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
- (3) If an offence has been committed, a constable may arrest without a warrant—
- (a) anyone who is guilty of the offence;
  - (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
- (4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.
- (5) The reasons are—
- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person’s name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name); ...”

### ***Rice v Connolly***

16. The offence created by section 89(2) of the Police Act 1996 is in identical terms to section 51(3) of the Police Act 1964, which was considered by this court in *Rice v Connolly*. The defendant, Mr Rice, was charged with wilful obstruction. On the night in question a series of “breaking offences” had been committed. A police officer was on the lookout for people acting suspiciously. The defendant was seen walking back and forth in the vicinity of the previous offences and generally acting in a way that the

officer considered suspicious. The police officer asked Mr Rice for his name and address. He replied, “give me a good reason why I should.” He refused to give his full name and address. He was arrested. No charges other than for wilful obstruction were brought against him.

17. Lord Parker CJ observed that the prosecution had to prove (i) that there was an obstruction of a constable, (ii) that the constable was at the time acting in the execution of his duty and (iii) that the person obstructing did so wilfully (419A-B). He considered it clear that the first two ingredients were met: “the defendant was making it more difficult for the police to carry out their duties” and “the police at the time and throughout were acting in accordance with their duties” (419C to D).
18. However, Lord Parker held that “wilful obstruction” requires conduct that is not only intentional but also “done without lawful excuse” (419D to E). Although everyone has a moral and social duty to assist the police, “there is no legal duty to that effect and indeed the whole basis for the common law is the right of the individual to refuse to answer questions put to him by persons in authority” (419E-F). Mr Rice had a lawful excuse for his obstruction, namely that he was under no duty to assist the police, and so he was not guilty of the offence.

### ***The parties’ submissions***

19. The appellant contends that the answer to both questions stated by the justices is ‘yes’. In support of this contention, counsel for the appellant, Mr Tom Wainwright, submits, first, it is clear from *Rice v Connolly* that for an obstruction to be wilful it must be done without lawful excuse, as is made clear in *Dibble v Ingleton* [1972] 1 QB 480 at 488 (d) to I:

“Refusal to act cannot amount to a wilful obstruction unless the law imposes upon the person some obligation in the circumstances to act in the manner requested by the police officer.”

20. Secondly, applying *Rice v Connolly*, the appellant was under no obligation at common law to give the police officer his name and address.

21. Thirdly, no express statutory duty to provide such information to the police was created by the Coronavirus Regulations.
22. Fourthly, an obligation to provide personal information to the police constitutes an interference with an individual's rights under Article 8 of the European Convention on Human Rights. As such, any restriction of the right must be in accordance with the law. In the absence of an express legal duty, there is not a sufficiently clear and foreseeable basis for imposing the obligation to meet the requirement that any interference with Article 8 rights must be shown to be in accordance with the law.
23. Finally, a statutory duty to provide information to the police cannot be implied into the Coronavirus Regulations. Such a duty had been created expressly in some statutory contexts demonstrating that where the legislature intends to impose such an obligation, it says so expressly. The absence of such an obligation in the Coronavirus Regulations does not render them inoperable. The Coronavirus Regulations remain enforceable: if the police are unable to issue a fixed penalty notice because a person has not provided his name and address, the police have the power to arrest and charge that person, as occurred in this case.
24. The respondent has acknowledged that the submissions advanced by the appellant are supported by a clear line of authority and that there is some force in the appellant's contention that the justices erred in law. Nevertheless, recognising that the question of whether to allow the appeal is a matter for the court, counsel for the respondent, Mr Louis Mably QC, has helpfully advanced submissions in support of the decision of the justices.
25. The respondent draws attention to two cases since *Rice v Connolly*, namely *Ricketts v Cox* [1983] 74 Crim.App.R 298 and *Sekfali & ors v DPP* [2006] EWHC 894 (Admin), in which the court found that the circumstances in which individuals refused to co-operate with the police when approached in the street did amount to obstruction. However, Mr Mably acknowledges that the facts of the appellant's case, as set out in the case stated, do not appear to involve any positive acts of the kind that gave rise to the obstruction in *Ricketts* or *Sekfali*.

26. The respondent acknowledges citing *Rice v Connolly* and *R (Mengesha) v Commissioner of Police of the Metropolis* [2013] EWHC 1695 (Admin) that there is no general common law duty requiring a person to answer questions and provide his details to a police officer when asked to do so. The circumstances of the appellant's case appear to be similar to those in *Rice v Connolly*. The distinction drawn by the justices on the basis that there was a reasonable suspicion that the appellant was committing an offence, whereas Mr Rice was going about his lawful business, appears to be inconsistent with *Rice v Connolly* and *Sekfali*, and with the principle that the right to remain silent does not depend on whether the subject has committed an offence.
27. It is common ground that there is no express statutory duty in the Coronavirus Regulations requiring a person to answer a request by the police officer to provide his name and address.
28. In support of the justices' conclusion that such a statutory duty should be implied in order to make the scheme of the Coronavirus Regulations effective, the respondent puts forward three arguments:

(a) The scheme is operative in a time of public health emergency. During the emergency period no person may leave the place where they are living without reasonable excuse. Enforcement powers are related to circumstances where a person is in a public place in contravention of this requirement. Identifying people and ascertaining where they lived is central to the legislative scheme.

(b) Certain enforcement powers under the Coronavirus Regulations require the police to know where people live, in particular Regulation 10(2) empowers officers to remove persons to a place where they live. It is impossible to exercise this power without knowing where a person lives. So the power implies a corresponding duty on the person to disclose who he is and where he is living.

I Fixed penalty notices can only be issued effectively if the identity of the recipient is known. The power to issue a notice requires a correlative duty to give the information necessary for a notice to be issued.

29. Nevertheless, the respondent accepts that the absence of an express duty to provide this information is significant. If a duty were intended, it could easily have been enacted. An express duty better accords with Articles 6 and 8 of the ECHR, while an implied duty in this context would seem to apply to all legislation concerned with fixed penalty notices.

### *Analysis*

30. In this case, as in *Rice v Connolly*, the first two ingredients of the offence were met. The officers were acting in accordance with their duties and, by refusing to give his name and address, the appellant made it more difficult for the police to carry out their duties. But to establish the offence, it also has to be proved that in refusing to give this information, the appellant was acting “wilfully”, that is intentionally and without lawful excuse.
31. The question is therefore, whether the appellant was under a legal obligation (whether at common law or pursuant to legislation) to give the information. If he was not, then in refusing to do so he was exercising his right to remain silent and so had a lawful excuse.
32. The appellant was under no obligation at common law to give the police officer his name and address. The distinction that the justices drew between the facts of this case compared to *Rice v Connolly* is illusory. In both cases the charge of wilful obstruction arose in circumstances where a police officer was questioning the individual due to a suspicion of criminal activity, albeit Mr Rice was not charged with any other offence, whereas the appellant was charged and acquitted of breaching the Coronavirus Regulations.
33. More importantly, as a matter of principle, the appellant did not lose his right to refuse to answer questions because, at the time, the police officer had grounds to suspect he was in breach of the Coronavirus Regulations. The right to remain silent is not reserved only for those who are innocent and beyond suspicion. Such a proposition is inconsistent with *Rice v Connolly*. It is also contrary to *Sekfali*, in which the Divisional Court held (at [10]) that the three appellants who the police wished to question in connection with shoplifting offences (one of whom was subsequently convicted of

going equipped contrary to section 25 of the Theft Act 1968 while all three were convicted of wilful obstruction):

“would have been entitled to remain silent and not answer any questions put to them. They could have refused, if they had not been arrested, to accompany the police to any particular place to which they might have been requested by the police to go. They could have said that they had no intention of answering questions and they could, no doubt, have said that as a result they were intent on going on their way and have done so without giving rise to a case which would entitle the court to conclude that in departing they were intending to impede the police officers and obstruct the police officers in the execution of their duty.”

34. Was the appellant under a statutory obligation, pursuant to the Coronavirus Regulations, to provide his name and address when it was requested by an officer on 23 April 2020? As the justices recognised, the Coronavirus Regulations did not *expressly* create any such obligation. The obligation only exists if, as a matter of statutory interpretation, it was necessarily created by implication.
35. The appellant’s refusal to give his name and address foiled the police officer’s intention to issue a fixed penalty notice pursuant to Regulation 13(1). But the legislative scheme was not rendered unworkable. The Coronavirus Regulations were enforced by trying the appellant for an offence under them.
36. There is more force in the contention that the power provided by Regulation 10(2)(b), “to remove a person P to a place where he is living,” will be ineffective if the police officer is unable to ascertain where the person lives. Without knowing the address, the officer may direct a person to return home, pursuant to Regulation 10(2)(A), but he will not be able to take him there pursuant to Regulation 10(2)(b). However, this does not leave the officer powerless to enforce the Coronavirus Regulations. If a constable has reasonable grounds of suspecting that a person is contravening Regulation 8(1), and the person refuses to give his name and address, he may be arrested under section 24 of the Police and Criminal Evidence Act 1984 in order for his name and address to be ascertained. That is what occurred in this case.
37. As the respondent recognised, the argument that it is necessarily implicit in the power to issue a fixed penalty notice, pursuant to Regulation 13 of the Coronavirus

Regulations, that the individual is obliged to give his name and address would, if it were accepted, potentially apply in any case, under any enactment, where a police officer has the power to issue a fixed penalty notice.

38. Our attention has been drawn to three cases where the courts have held an implied duty to act in response to a request by a police officer carrying out a duty arises. Two of these cases – *DPP v PJ Carey (Contractors) Limited* [1970] A.C. 1072 and *Stunt v Bolton* [1972] RTR 435 – arise in the particular context of road traffic offences. In third case, *Lunt v DPP* [1993] 2 WLUK 338, it was held that a police officer’s power to enter premises pre-supposed a duty on the occupier to open the door to the premises when asked to do so, and that the failure to admit the officer was therefore capable of constituting an obstruction. As Mr Wainwright points out, the case report indicates that the defendant may have committed a positive act: rather than merely omitting to open the door it appears that he hid.
39. None of those cases were about compelled speech. The right to remain silent is of particular significance at common law. And an obligation on an individual to give his name and address to the police would also engage the individual’s rights under Articles 6 and 8 of the ECHR.
40. In my judgment, it is clear that the Coronavirus Regulations did not impliedly require individuals to give their name and address to a police officer on request. Carefully defined powers have been conferred on police officers by statute and the court should be wary of expanding them by implication. Where the legislature has intended to give police officers the power to require a person to give his name and address and to impose a corresponding duty on the individual to give that information, it has done so expressly: see, for example, section 50 of, and paragraph 3 of schedule 3C to, the Police Reform Act 2002; section 37 of the Road Traffic Act 1988; and sections 31 and 31(a) of the Game Act 1831. Consequently, the absence of such an express obligation in the Coronavirus Regulations powerfully demonstrates that it does not exist.
41. As the appellant was not legally obliged to give his name and address, it follows that his refusal was not “wilful” within the meaning of section 89(2) of the Police Act 1996.

### ***Conclusion***

42. The answers to the questions stated by the justices are that they erred in distinguishing this case from *Rice v Connolly* and in finding the appellant guilty of wilfully obstructing a police officer in the execution of his duty.

### **LORD JUSTICE DINGEMANS:**

43. I agree that the appeal ought to be allowed for the reasons given by Mrs Justice Steyn and agree with the answers given to the questions asked.
44. The issue raised by the questions is whether the appellant committed the offence of wilfully obstructing a police officer in the execution of his duty, contrary to the Police Act 1996, by not providing his name and address. There is no common law duty on the part of a citizen to provide his name and address to the police for the reasons given in *Rice v Connolly*. The Regulations might have provided a duty on the appellant to give his name and address to the police. The Regulations did not do so expressly, as appears from the language of the Regulations, and this is common ground.
45. In my judgment, the Regulations did not impliedly provide such a duty on the appellant to give his name and address, for the reasons given by Steyn J. It might be noted that the appellant's failure to provide his name and address when he was asked to do so by the police officers did not assist the appellant in this case. This is because the police officers had reasonable grounds for suspecting him to be committing an offence under the Regulations and arrested him so that his name and address could be ascertained pursuant to section 24(5)(a) and (b) of the Police and Criminal Evidence Act 1984. This power of arrest to ascertain the appellant's name and address, provided by section 24 of the 1984 Act, shows that it is not necessary to imply a legal duty on the appellant to provide his name and address under the Regulations.
46. As a matter of fact at the trial the justices found that the appellant had a reasonable excuse, within the meaning of the Regulations, for being outside. The fact of a successfully completed trial showed that the Regulations have remained effective and enforceable, without any duty under the Regulations on the appellant to provide his name and address.

47. In all of these circumstances the appellant's refusal to provide his name and address was unhelpful to the police officers, but it was lawful. The appellant could not therefore be guilty of wilfully obstructing a police officer in the execution of his duty because he was acting lawfully in refusing to give his name and address.
48. I am very grateful to the legal teams for both parties for the helpful written and oral submissions that we have had this morning.

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**This transcript has been approved by the Judge**