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Case No: AC-2023-LON-000179
previously CO/10/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 March 2024

Before :

LORD JUSTICE BEAN
MR JUSTICE GRIFFITHS

- -

Between :

THE KING **on the application of** **ANDREAS MICHLI**	**Claimant**
- and -	
WESTMINSTER MAGISTRATES COURT	**Defendant**
-and-	
CROWN PROSECUTION SERVICE	**Interested Party**

- -

Josh Normanton (instructed by Nicholls & Nicholls) for the Claimant
Paul Jarvis (instructed by Crown Prosecution Service) for the Interested Party
The Defendant did not appear and was not represented

Hearing date: 7 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Bean and Mr Justice Griffiths:

1. This is a claim for judicial review of a refusal by District Judge Michael Snow in the Westminster Magistrates Court to state a case pursuant to section 111 of the Magistrates Court Act 1980.

2. However, the parties have agreed that this court should address the substantive question which the proposed appeal by case stated is intended to address. That question is whether or not the claimant's conviction in the Magistrates Court should be set aside, on the grounds that the prosecution was statute-barred. Addressing the substantive issues in the case, and not merely the refusal to state a case, is in accordance with the principles considered by the Divisional Court in *Sunworld Ltd v Hammersmith and Fulham London Borough Council* [2000] 1 WLR 2102.

Relevant facts and procedural history

3. On 14 February 2021 the claimant hosted a gathering at his home in London of more than 15 people, contrary to the coronavirus lockdown regulations then in force: specifically, regulation 10(1)(a) and (2) and paragraph 3(1) of Schedule 3A to the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020. Police attended the claimant's home at 1 am on that date and, based upon what they saw, issued him with a Fixed Penalty Notice on the same day.

4. The Fixed Penalty Notice of 14 February 2021 was issued by a police constable, in the sum of £10,000. Subsequently, the police decided that it ought to have been authorised at a more senior level, by a superintendent, although it has not been suggested to us that this was required as a matter of law. Consequently, another Fixed Penalty Notice, duly authorised at that level, was issued against the claimant and sent to him by post on 26 April 2021.

5. The claimant did not pay.

6. The police, acting as prosecutors, issued and sent to the claimant by post (pursuant to section 29 of the Criminal Justice Act 2003) a Single Justice Procedure Notice charging him with the offence. It stated that the posting date was 20 August 2021. It said that the claimant had 21 days to plead guilty or not guilty. It said that the fine stood at £800. It enclosed evidence in support of the prosecution. It gave the claimant three options: (1) pleading guilty under the Single Justice Procedure, after which a decision by a magistrate would be made without a formal court hearing and without his attendance; (2) pleading guilty in court, in which case a summons would follow, giving the date and time of a court hearing, which might proceed in his absence if he did not attend; or (3) pleading not guilty, in which case, again, a summons would follow, notifying him of the date of a court hearing.

7. The Single Justice Procedure Notice documents required the claimant to choose one of these three options in a section headed "Your Plea". Page 11 had an additional section, headed "Not guilty: information for the court", which required the claimant, in the event that he chose to plead not guilty, to complete a box stating: "I am pleading not guilty because: …."

8. Page 4 of the Single Justice Procedure Notice documents (headed "Charge Sheet") stated that the "charge date" was 11 August 2021.

9. On 31 August 2021 the claimant sent back his response to the Single Justice Procedure Notice documents, pleading "not guilty". The reason he gave for this was: "I am innocent and have committed no crime". His response was received by Her Majesty's Courts Service on 3 September 2021.

10. The case was originally listed for trial on 23 February 2022. The claimant's advocate invited the bench of magistrates on that occasion to deal with preliminary legal arguments and she opened her case on the prosecution being statute barred. The magistrates decided that they did not have time to make any decision, even on the legal point. Since the trial had to be adjourned in any event because of late disclosure, they adjourned the legal argument as well.

11. The case came back to court on 28 February 2022, before District Judge Snow. The claimant was not present but he was represented by his advocate, who argued that the prosecution was out of time. That issue was dealt with as a preliminary issue by District Judge Snow on 28 February 2022. After listening to arguments from both sides on whether the prosecution was out of time, the judge gave an oral explanation for ruling against the claimant, of which a brief solicitor's note was taken.

12. The claimant was subsequently tried and convicted on 26 April 2022 and fined £200.

13. The claimant applied for a case to be stated in relation to District Judge Snow's decision on 28 February 2022 so that it could be challenged in the Administrative Court. The application was made in a document settled by Counsel dated 18 March 2022 entitled "Application to State a Case – Grounds of Appeal". It summarised the facts, the law, the arguments advanced on 28 February 2022, and the grounds of appeal against the decision of District Judge Snow on that date. This application was received by the court on 26 April 2022.

14. On 6 May 2022, the Crown Prosecution Service provided a short response to the substantive grounds of appeal citing rule 35.3(3) of the Criminal Procedure Rules, but did not specifically oppose the request for a case to be stated.

15. As a result of administrative delays, the application for a case to be stated was not brought to District Judge Snow's attention until 18 August 2022. He refused it with written reasons dated 6 September 2022 which justified his original decision. He ended by saying: "I certify that this application is frivolous and I refuse to state a case pursuant to section 111(3) of the Magistrates' Courts Act 1980".

16. The Claim Form seeking judicial review of the refusal to state a case was filed on 6 December 2022 and an Acknowledgment of Service was filed on behalf of the Crown Prosecution Service, as Interested Party. The defendant (Westminster Magistrates' Court) did not file a defence and adopted a neutral stance.

17. Permission to apply for judicial review was granted by Mr Justice Lavender on 12 April 2023.

18. A witness statement made by District Judge Snow and dated 20 April 2023 was then filed and served. It elaborated on the reasons he had given for refusing to state a case. It concluded: "I do not contest the claim in this case. I submit this statement to clarify the position."

The law

19. Section 127 of the Magistrates Courts Act 1980 provides (with exceptions in the case of indictable offences, which are not relevant):

> **127 Limitation of time.**
>
> (1) Except as otherwise expressly provided by any enactment (…), a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose."

20. The claimant was charged under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 ("the 2020 Regulations"). The 2020 Regulations were made under the Public Health (Control of Disease) Act 1984 ("the 1984 Act").

21. Section 64A of the 1984 Act provides:

> "**64A Time limits for prosecutions**
>
> (1) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980, a magistrates' court may try an information (or written charge) relating to an offence created by or under this Act if the information is laid (or the charge is issued) —
>
> (a) before the end of the period of 3 years beginning with the date of the commission of the offence, and
>
> (b) before the end of the period of 6 months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge."

22. In *Letherbarrow v Warwickshire County Council* [2014] EWHC 4820 (Admin), Bean LJ considered section 31(1)(b) of the Animal Welfare Act 2006 which is in identical terms to section 64A(1)(b) of the 1984 Act. He said, at para 17:

> "It is an unusual time limit provision in that it extends the time limit for prosecution potentially well beyond the usual 6 months set out in the Magistrates' Court Act 1980. It creates a first alternative, a long stop time limit of 3 years, and a second alternative, 6 months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge. If the prosecution do nothing at all for more than 2 years, then stir themselves and

> issue summonses within 5 months of evidence coming to their knowledge, then they would be within the time limit set out in section 31(1) .
>
> What the section does show is that Parliament expected the consideration of a prosecution under this section to be the subject of a careful decision. The decision which the prosecutor has to make under this subsection is not whether there is a *prima facie* case but whether the evidence is sufficient to justify a prosecution."

23. In *R v Woodward* [2017] EWHC 1008 (Admin), [2017] Crim LR 884, Hickinbottom LJ cited this passage from *Letherbarrow* and said (at para 23(iii) of *Woodward*):

> "For the purposes of this appeal, an understanding of the nature of the decision which the prosecutor is required to make under section 31(1)(b), as set out by Bean LJ in that passage, is crucial: the relevant date is the date upon which the prosecutor considers that, upon the available evidence, it is in the public interest to prosecute the particular individual or individuals. That decision needs to be made with especial care; and it cannot be avoided or delayed by – to use the phrase of Pill LJ in *RSPCA v Johnson* [2009] EWHC 2702 (Admin) at [33]) – the mere "shuffling of papers", or by information being sat on so as to extend the time limit. So far as substance is concerned, it demands, not merely consideration of whether there is a *prima facie* case, but whether it is in the public interest for such a prosecution to be brought. That requires consideration of, and often investigation into, factors which bear upon that issue, for which a prosecutor is entitled to reasonable time, even after the primary evidence has been gathered in, and even after the prosecutor has decided that there is or may be a *prima facie* criminal case against someone or even identified individuals. That remains good law, the relevant passages from both *Johnson* and *Letherbarrow* being recently endorsed by Gross LJ (with whom Andrews J agreed) in *Riley v Crown Prosecution Service* [2016] EWHC 2531 (Admin), [2017] 1 WLR 505 at [17]."

24. The offence with which the claimant was charged under the 2020 Regulations was a summary offence. The 2020 Regulations contain no provisions for time limits independent of those in section 127 of the Magistrates Courts Act 1980 and section 64A of the 1984 Act which we have quoted above. They do, however, in Regulation 11 deal with the relationship between the issue of a Fixed Penalty Notice and the institution of proceedings. Regulation 11 of the 2020 Regulations provided (before it was revoked):

> "**Fixed penalty notices**
>
> (1) An authorised person may issue a fixed penalty notice to any person that the authorised person reasonably believes—
>
> (a) has committed an offence under these Regulations, and

> (b) is (in the case of an individual) 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 an authority specified in the notice.
>
> (…)
>
> (4) Where a person is issued with a notice under this regulation in respect of an offence—
>
> (a) no proceedings may be taken for the offence before the end of the period of 28 days following the date of the notice;
>
> (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period."

The arguments

25. At the hearing before District Judge Snow on 28 February 2022, we understand from the claimant's Statement of Facts and Grounds that it was submitted on his behalf that the limitation period began on the date of the offence (14 February 2021) and ran for 6 months thereafter. It was submitted that the prosecution was brought on 20 August 2021 (the date on which the Single Justice Procedure Notice documentation, including the Charge Sheet, was posted). This being more than 6 months after the date of the offence, it was submitted that the prosecution was statute-barred.

26. A witness statement provided to us by the claimant's advocate in the magistrates' court (dated 23 May 2023) puts the point slightly differently. This states that the original argument was that time ran from 14 February 2021, not because it was the date of the offence, but because it was also the date on which the first Fixed Penalty Notice was issued. It was argued that time began to run from the date of the Fixed Penalty Notice even though no prosecution was possible in the first 28 days of the following period. Six months from that date therefore expired before the Single Justice Procedure Notice was posted on 20 August 2021.

27. On behalf of the prosecution, on the other hand, it was argued at the hearing on 28 February 2022 by police officers (by reference to a written note from the Justices' Clerks Society which they handed to District Judge Snow) that:

> "…the start point for police prosecutions is the end of the fixed penalty period (28 days) *if* a fixed penalty was offered. That is because the prosecutor has six months from the time when "sufficient evidence to justify proceedings" came to their knowledge, and until the fixed penalty period has expired, they will not have sufficient evidence to justify proceedings, as they can't prosecute at all."

28. The District Judge appeared to accept that argument. In the solicitor's brief note of his oral explanation on 28 February 2022 for rejecting the claimant's submission that the

prosecution was out of time, he is recorded as saying that the limitation period expired on 23 November 2021, apparently because he started to count the 6 months from the last date that payment could be made under the second Fixed Penalty Notice, i.e. 28 days after the second Fixed Penalty Notice dated 26 April 2021.

29. The claimant's "Application to State a Case – Grounds of Appeal" dated 18 March 2022 referred to the relevant law, including section 64A of the 1984 Act, Regulation 11 of the 2020 Regulations, and the passages from *Letherbarrow* and *Woodward* which we have cited above. It argued that the issue of a Fixed Penalty Notice on 14 February 2021 showed that the police already reasonably believed (pursuant to Regulation 11) that the claimant had committed the offence and, consequently, must have formed the belief that there was sufficient evidence that an offence had been committed. This meant that the relevant date for the purposes of section 64A(1)(b) of the 1984 Act was 14 February 2021 and the Charge Sheet posted on 20 August 2021, being more than 6 months after that, was out of time.

30. The Crown Prosecution Service's written response to the application to state a case, dated 6 May 2022, argued that the relevant date was not 20 August 2021, when the Charge Sheet was posted, but 11 August 2021, which was the date on which it was said (on the face of the document) to have been issued. It cited *Brown v DPP* [2019] EWHC 798 (Admin), [2019] 1 WLR 4194 in which Irwin LJ rejected (at para 19) the submission that the laying of an information or the making of a complaint within the meaning of section 127 of the Magistrates Courts Act 1981 occurred only when the written charge was posted. Irwin LJ instead referred to the revised procedure for initiating summary proceedings established by section 29 of the Criminal Justice Act 2003, which refers to the institution of criminal proceedings "by issuing a document (a 'written charge') which charges the person with an offence". At para 20 of *Brown v DPP*, Irwin LJ said:

> "In my view, the written charge can be regarded as issued only when the document comprising the written charge is completed, with all relevant details and in the form needed for service. Provided that is done within six months of the relevant offence, the written charge will have been issued in time."

31. The Crown Prosecution in their response to the application to state a case therefore focussed on the issue date of the Charge Sheet, rather than the date of posting, and relied on the statement on the face of the document that the issue date was 11 August 2021. That was less than six months after 14 February 2021.

32. The claimant tells us (relying on the witness statement from his advocate at the hearing on 28 February 2021) that this was not the focus of the argument at the hearing on 28 February 2021, and it was not the basis upon which District Judge Snow justified his decision that the prosecution was brought in time, when he gave oral reasons for that decision on the day of the hearing.

33. However, when giving written reasons for refusing to state a case on 6 September 2022, District Judge Snow relied primarily on the second submission, based on *DPP v Brown* and an issue date of 11 August 2021, which meant that six months had not expired even if it began to run as early as 14 February 2021. It was for this reason that he said that the proposed question for the High Court (namely, "Whether the court erred in finding

that the limitation period began on the day the time for payment of the fixed penalty notice elapsed (i.e., 28 days after the issue of the [second] fixed penalty notice)") was "frivolous", because (as he put it) "on the agreed evidence the charge was laid within 6 months of the allegation in compliance with section 127 of the Magistrates' Courts Act 1980".

34. District Judge Snow did, however, reaffirm what appears to have been his original reasoning as well. He said:

> "12. In any event these offences have an extended time limit. I accepted that the standard time limit in s.127 MCA 1980 for summary offences from commencing prosecutions of 6 months applies. However, s.64A(1)(b) of the Public Health Act1984 provides an extended time limit. A prosecution may commence within 6 months of "sufficient evidence to justify proceedings coming to the prosecutor's knowledge", provided the charge is issued no more than 3 years from the offence. A certificate from the prosecutor of when they obtained that knowledge is determinative.
>
> 13. The time does not start to run for the extended time limit until the time to pay has expired. That is because before that point "sufficient evidence to justify proceedings" could never arise, since the prosecution is barred until the time limit has expired. (The test is not "sufficient evidence *of the offence*".)
>
> 14. The charge was therefore laid in time."

35. Two grounds of appeal have been argued before us on these substantive questions.

36. Ground 1 argues that the District Judge's refusal to state a case based on *Brown v DPP* and the date from which time *ceased* to run, taken by the District Judge in his refusal to be 11 August rather than 20 August 2021, was contrary to the focus of the argument put to him at the hearing on 28 February 2022 and was not the decision he actually made on that date. Although the District Judge in his most recent witness statement, dated 20 April 2023, more than a year after that hearing, and without referring to any contemporaneous note or document, asserts that the claimant's advocate "conceded that the written charge had been issued by PC Walter on 11 August 2022", that fact had not (it is argued) been proved and had not been conceded. The advocate's witness statement dated 23 May 2023 says:

> "There was (…) no evidence put forward by the Crown proving that the charge had been authorised/issued within the relevant time (it was not an issue identified at that time). The defence reiterated to the Judge that it was for the prosecution to prove that this was the case and a lack of evidence supplied means they had failed that test.
>
> (…) The written charge was in fact issued on 20 August and not 11 August as indicated.

> (…) In reference to the statement of District Judge Snow, I was the advocate in Court who acted on behalf of Mr Michli. At no point did I concede that the written charge had been issued on 11 August 2021. The entire submission was based on the charge being issued on 20 August and that there was no agreement that the charge was issued on 11 August nor any resolution of that issue. The argument put forward was the prosecution had to prove that the charge was issued on the 11 August, and nothing was forthcoming as the issuance was after the statute limitation, the 20/08/2021.
>
> (…) the District Judge did not address the submissions put forward by the defence. He stated that it was irrelevant on the basis that the six month statutory time limit began at the earliest of the 14th March 2021 as a default position but that his finding was that the statutory time limit didn't expire until 23/11/2021 and therefore the summons was issued within the relevant time."

37. The claimant submits that there was no concession or fact-finding exercise at the hearing on 28 February 2022 as to whether the charge was indeed issued on 11 August and that, if this was to be relied upon as a fact, it had to be proved. Reliance is placed on the dictum of Auld LJ in *Atkinson v Director of Public Prosecutions* [2004] EWHC 1457 (Admin), [2005] 1 WLR 96, at para 18 referring to *Lloyd v Young and Ors* [1963] Crim LR 703 and saying:

> "…if on evidence of whatever nature before the court, magistrates doubt the date of the information, such that it could have been laid outside the time limit, they are entitled to, and should decline, jurisdiction. It is a matter of fact for their determination in accordance with the ordinary criminal burden and standard of proof."

38. Ground 2 argues that, by issuing the Fixed Penalty Notices, the police, who were agreed to have acted in due course as prosecutors, demonstrated that they already believed that they had enough evidence that an offence had been committed. This follows from the wording of Regulation 11(1)(a), which only allows an authorised person to issue a Fixed Penalty Notice against another person when the authorised person "reasonably believes" that the other person "has committed an offence under these Regulations". The 28 day period of grace for paying a fixed penalty and avoiding prosecution did not mean that time did not immediately start to run. The question in section 64A(1)(b) of the 1984 Act was when the prosecutor had knowledge of "evidence" sufficient to justify proceedings, and the evidence was in hand from the outset. Non-payment of the fixed penalty was not required to complete "evidence… sufficient to justify the proceedings" within the meaning of section 64A(1)(b). Time ran from the date of the offence on 14 February 2021, because that was the only day on which there was proof that the evidence was considered.

39. The claimant's counsel drew an analogy with the law on fixed penalties under the Road Traffic Offenders Act 1988, which contains in section 78 a provision similar to Regulation 11(4) of the 2020 Regulations. In road traffic cases, he submitted, proceedings have to be brought within six months of the offence, and this is not affected

by the issue of a Fixed Penalty Notice. However, the claimant conceded that there is no provision comparable to section 64A(1)(b) of the 1984 Act in these cases, with the result that the ordinary six month time limit from commission of the offence is applied by section 127 of the Magistrates Courts Act 1980.

40. Opposing the application for judicial review, the Interested Party accepts the dispute of fact as to whether a concession was made about issue of proceedings on 11 August 2021 but submits that the evidence of the District Judge should be preferred. It argues that the District Judge was correct in the reasons he gave for refusing to state a case, which deal both with Ground 1 and Ground 2.

41. On Ground 1, the Interested Party cites *Young v Director of Public Prosecutions* [2020] EWHC 976 (Admin), [2020] Crim. LR 854, at para 31, stating that "the written charge is a public document (…) and, as such, admissible as to the truth of the date upon which it stated that it had been issued." The statement on the face of the Charge Sheet that it was issued on 11 August 2021 was, it is argued, sufficient to prove the point.

42. On Ground 2, *Letherbarrow* is said by the Interested Party to justify the District Judge's decision that section 64A(1)(b) of the 1984 Act meant that time did not run in this case until after expiry of the period for payment of the second Fixed Penalty Notice. Whether the proceedings were issued on 11 August or 20 August 2021, they were in both cases within the 6 month time limit from that expiry date.

Discussion and decision

43. A case need not be stated if the application is in the opinion of the magistrates "frivolous" (section 111(5) of the 1980 Act). The meaning of "frivolous" in this context was considered by Lord Bingham LCJ in *R v North West Suffolk (Mildenhall) Magistrates' Court* [1998] Env. LR 9 at para 16.

44. If the District Judge had granted the application to state a case, a draft case would have been served on the parties, including "a succinct summary of the nature and history of the proceedings, the court's relevant findings of fact, and the relevant contentions of the parties" (Criminal Procedure Rules 2015 rule 35.3). The parties would have had an opportunity to comment on the draft before it was finalised: rule 35.3(6).

45. One of the consequences of his refusal to state a case is the lack of clarity as to the basis of the decision made on 28 February 2022, and also the relatively late appearance of a dispute about how the argument proceeded on 28 February 2022: in particular, whether there was a concession about 11 August 2021 being the date of issue of proceedings.

46. However, Ground 2, raising the issue of when time began to run, does not involve any dispute of fact. Mr Normanton argued Ground 2 first, and we shall deal with it first in this judgment.

Ground 2

47. It is not disputed that the evidence relied upon in the Single Justice Procedure Notice derived from the police visit to the claimant's home on 14 February 2021. It included evidence from police witnesses and evidence captured on their body worn cameras.

48. The issue of the first Fixed Penalty Notice on the date of the offence, 14 February 2021, shows (because it was issued under Regulation 11) that the police officer who issued it was already of the opinion that it was reasonable to believe that an offence had been committed. That must also have been the case when the second Fixed Penalty Notice was sent by post on 26 April 2021.

49. By virtue of Regulation 11(4)(a) of the 2020 Regulations, no proceedings could be taken for the offence "before the end of the period of 28 days following the date of the notice". Moreover, by virtue of Regulation 11(4)(b), the claimant could not be convicted of the offence if he paid the fixed penalty before the end of that period.

50. The time limit for bringing the prosecution did not expire "before the end of the period of 6 months beginning with the date on which evidence which the prosecutor thinks is sufficient to justify the proceedings comes to the prosecutor's knowledge" (quoting section 64A(1)(b) of the 1984 Act).

51. The question of whether the prosecutor thinks the evidence is "sufficient to justify the proceedings" is to be tested (applying the dictum in *Letherbarrow* at para 17), not by asking whether merely there is a *prima facie* case, but by asking "whether the evidence is sufficient to justify a prosecution". For a prosecution to be justified, a public interest as well as an evidential test has to be satisfied. The requirement that a prosecution should be "justified" is not taken only from *Letherbarrow;* it is in section 64A itself, which makes time run from the date on which evidence which "the prosecutor" thinks is sufficient to "justify" the proceedings comes to "the prosecutor's" knowledge. Whether a prosecution is justified, in the judgment of a prosecutor (the section 64A question which is relevant to the time limit), is a larger question than whether there is evidence which would be sufficient to secure a conviction. Whether there are reasonable grounds for believing an offence has been committed (the Regulation 11(1) test which determines whether a Fixed Penalty Notice can be issued) is a different question again.

52. This is a point of principle which is not affected by the fortuitous circumstance that police officers acted in this case both as "authorised person" (entitled by Regulation 11(9)(a) to issue Fixed Penalty Notices) and as prosecutor (on behalf of their chief officer of police, a prosecutor designated by the Secretary of State under Regulation 13). The questions remain different, even if the same person is called upon to answer them.

53. The operation of Regulation 11(4) meant that the evidence was not sufficient to justify a prosecution until it was known whether the claimant would pay the fixed penalty. If he did, a prosecution would not be justified. Indeed, it would not even be permitted. If he did not pay, even if he made his refusal to pay clear from the outset (which, in this case, it seems he did not), a prosecution could still not be brought until expiry of the 28 days. The evidence justifying a prosecution could not be complete until it was known that there had been a failure to pay the Fixed Penalty Notice sum within the 28 day period allowed. Therefore, the evidence could not be sufficient to justify a prosecution until 28 days from the date of the Fixed Penalty Notice. Time did not start to run under section 64A(1)(b) of the 1984 Act until then.

54. In this case, there were two Fixed Penalty Notices. Even if the earlier of them is taken as the starting point, 28 days from the date of that notice on 14 February 2021 did not

expire until 14 March 2021. Six months from 14 March 2021 ended on 14 September 2021. This was well after, not only the purported date of issue of proceedings by completion of the Charge Sheet on 11 August 2021, but even the agreed date of posting on 20 August 2021. The claimant responded to the charge on 31 August 2021.

55. On any view, therefore, the prosecution was brought in time. Consequently, the claim must be dismissed on its substantive merits on Ground 2.

Ground 1

56. Our decision on Ground 2 makes it unnecessary to make a decision on Ground 1. We will, nevertheless, do so.

57. We are not inclined to reject the evidence of the claimant's advocate that she made no concession to District Judge Snow about the date of issue being 11 August 2021 as stated on the face of the Charge Sheet. It seems unlikely that she positively conceded that the date was not only stated on the document but was actually correct or that, having done so, she forgot she had, given that such a concession was potentially fatal to her case. However, we do not think it is necessary to decide that dispute of fact.

58. This is because no challenge to the date of issue was raised, even on the evidence of the claimant's advocate. This is not the same as saying she had conceded the point. It is her own evidence, and the claimant's submission to us, that it was simply not argued at or before the hearing before District Judge Snow on 28 February 2021.

59. The Charge Sheet was an official document. It included all the information necessary to stop time running as soon as it was issued, in accordance with the decision in *Brown v DPP* which we have summarised in paragraph 30 above. The Charge Sheet was dated 11 August 2021. There was no other evidence of the date of issue. The date of posting was later, stated elsewhere in the Single Justice Procedure Notice document as 20 August 2021. But this did not contradict the date of issue, because there was no reason why it had to be issued and posted on the same day. There were no internal inconsistencies or other evidence to raise doubts, such as those which troubled the courts in *Atkinson v Director of Public Prosecutions* [2004] EWHC 1457 (Admin), [2005] 1 WLR 96, and *Lloyd v Young and Ors* [1963] Crim LR 703.

60. The issue date stated on the Charge Sheet was admissible evidence that this was in fact the date of issue: *Young v DPP* [2020] EWHC 976 (Admin) per Flaux LJ at para 31. It could be challenged, but only by reference to other evidence: *Young v DPP* [2020] EWHC 976 (Admin) at para 33. No such evidence was presented in this case, either to the magistrates or to us.

61. The claimant argues that this was because no-one raised the date of issue as a point relevant to the case. He submits that the prosecution could not rely on the date of issue for limitation purposes without having done that, so that the claimant could consider his case, and test the evidence, for example by requiring the police officer named on the Charge Sheet to give evidence about the date of issue. This process might confirm the issue date or (depending on the evidence, perhaps including cross-examination of the police officer) cast doubt on it but (he submits) it could not be taken for granted.

62. However, the prosecution provided both the claimant and, in due course, the magistrates' court with evidence of the date of issue, by stating it on the Charge Sheet. It did not have to do anything else in order to prove the point. If the claimant wished to challenge the date, the onus was on him to do so. In the absence of such a challenge, "it was not necessary for the Magistrates to require further evidence, oral or written, to be sure that they had jurisdiction": *Young v DPP* [2020] EWHC 976 (Admin) at para 33.

63. The claimant could have challenged the date of issue when stating why he was pleading "not guilty" on the Single Justice Procedure Notice form, in the box designated for that. Or he might have done so subsequently, provided he gave due notice, so that if (for example) he required the officer who issued the charge to be called, the prosecution knew that he should be in court. That did not happen in this case.

64. No challenge to the issue date stated on the Charge Sheet was raised at the hearing on 23 February 2021, or at the hearing on 28 February 2021 which decided limitation, or at the hearing on 26 April 2022 when the claimant was convicted. Therefore, the claimant is bound by the date stated, there being no contrary evidence. This is neither incorrect nor unfair.

Conclusion

65. If we had been persuaded that the prosecution was statute barred, we would have quashed the conviction. For the claimant to succeed on that point, he had to prove both that time started to run on 14 February 2021 (Ground 2) and that it did not cease to run on 11 August 2021 (Ground 1). We have decided against him on both Grounds.

66. The prosecution was brought in time and the claimant was rightly convicted. It follows that the claim will be dismissed.