

Drafting an information for breach of an enforcement notice (Ceredigion CC v Robinson and others)

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Planning analysis: An allegation of an offence in an information or charge must describe the offence in ordinary language and make it clear what the prosecutor alleges. Amendments to section 179 of the Town and Country Planning Act 1990 (TCPA 1990) mean that it is no longer necessary, when prosecuting a defendant for non-compliance with an enforcement notice, to aver within the information the date upon which the period of compliance expired. The court held that the exact moment at which the compliance period expired was no longer of critical or defining importance. It is a necessary inference within an information that the date upon which the offence is said to have been committed, occurred after the period of compliance had expired. The prosecutor would still need to prove as a fact that the date for compliance had expired, but this fact was not essential to enable the defendant to understand what the prosecutor was alleging. Written by Francesca Levett, barrister, at 5 St Andrews Hill.

Ceredigion County Council v Robinson and others [\[2020\] EWHC 3425 \(Admin\)](#)

What are the practical implications of this case?

Proving the date upon which compliance of an enforcement notice should be met, is an essential condition precedent to be considered by both the prosecution and the defence before going on to consider whether there has been a breach of the enforcement notice. However, it is no longer essential for that date to be stated in the information, although the court observed that there is no harm in including it. The Criminal Procedure Rules 2020, [SI 2020/759](#) require a charge or information to describe the alleged offence in ordinary language and to make it clear what the conduct is that constitutes the commission of the offence. The critical question is whether the defendant would be prejudiced by the way in which the information is worded. An offence of failing to comply with an enforcement notice would need to specify the nature of the breach and the date upon which that breach occurred. The court concluded that it was not essential for the defendant to know within the information, that the date for compliance had expired. The court considered that expiry of the period of compliance was inferred from the date upon which the offence is said to have taken place.

For prosecutors, this makes the offence an easier one to draft provided there is clear evidence available as to when the period of compliance expired. Defence practitioners, however, should remain alive to the importance of seeing evidence confirming the expiry of the period of compliance before advising their clients as to plea.

What was the background?

Planning enforcement notices had been issued under [TCPA 1990, s 172](#), relating to unlawful buildings and structures on forestry land, and the defendants' residential occupation of them. The defendants were charged with carrying on activities in contravention of the enforcement notices. The offences were said to have been committed between 11 February 2012 and 15 August 2016, but the information did not set out the date upon which the enforcement notice needed to be complied with. It was therefore unclear, from the contents of the information, whether the prosecuting local authority were able to bring criminal proceedings for non-compliance.

The Crown Court, sitting as an appeal court, acceded to the defendants' submission that 'there could be no more relevant date of averment than the date that entitles proceedings to begin'. The Crown Court concluded that the date on which criminal proceedings became possible went to 'the very heart of the question of the power to use criminal sanctions in pursuance of a planning dispute'.

The prosecution appealed by way of case stated, on the basis that the date of expiry of the compliance period was not a necessary or vital averment within the information. The prosecution argued that case law that had been relied upon in the Crown Court failed to reflect the amendments to

[TCPA 1990](#). It was argued that these amendments rendered the date of expiry of the period of compliance less critical than it had been previously.

What did the court decide?

Allowing the appeal, the court considered the requirements of Criminal Procedure Rules 2015, [SI 2015/1490, r 7.3\(1\)\(a\)](#) (which was the version in force at the material time) whereby an information should provide such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant. Practitioners should note that this rule remains the same under the Criminal Procedure Rules 2020, [SI 2020/759](#). The court held that the informations complied with this requirement and were clear in conveying to the defendants that their conduct between 11 February 2012 and 15 August 2016 was alleged to be a criminal contravention of the specified enforcement notice. It was not essential for the defendant to be told within the information, the precise date on which the period for compliance came to an end.

The court held that the learned judge at the Crown Court had been wrong to find that the facts of the case were similar or identical to those within *Maltledge and Frost v Wokingham District Council* [1992] 64 P&CR 487 (not reported by Lexis@Nexis). The wording of [TCPA 1990, s 179](#) had changed since *Maltledge* had been decided. The wording at the time of *Maltledge* focused on the ending of the period of compliance with an intensity that was absent from the current wording of [TCPA 1990](#). The case of *Sanger v Newham London Borough Council* [2014] EWHC 1922 (Admin), [2015] 1 WLR 332 highlighted the relevance of the different wording of the 1991 version of [TCPA 1990](#) and the current wording of [TCPA 1990](#). The court did not exclude the possibility that there could be exceptional cases under the new wording of [TCPA 1990](#) which might require the precise date of expiry to be specified, but on the facts of this case, which was considered to be 'typical', the Information were not defective.

Case details

- Court: Queen's Bench Division, Divisional Court, High Court of Justice
- Judges: Lord Justice Stuart-Smith Mrs Justice Jefford DBE sitting remotely at Cardiff Civil Justice Centre
- Date of judgment: 18 November 2020

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