

IN THE CROWN COURT
SITTING AT NEWCASTLE UPON TYNE
BETWEEN

Marine Management Organisation

and

Greenpeace Limited
and

Greenpeace UK Limited
and

John Sauven

NOTE IN RESPONSE TO JUDGE'S PROPOSALS and MMO DOCUMENT

Background

1. Following a hearing on 2 and 3 December 2021 (the hearing), HHJ Bindloss delivered his reserved judgment on 12 January 2022, on whether the UK and therefore the Marine Management Organisation (MMO) had jurisdiction to prosecute the defendants (Greenpeace); finding that the UK/MMO did have jurisdiction.

Public Interest

2. At the hearing, Greenpeace also had invited HHJ Bindloss to make observations on whether it was in the public interest to prosecute Greenpeace. Greenpeace referred to written and oral representations it had made. It considered the decision-making of ongoing prosecution, particularly in this time of climate emergency, defying logic.
3. However, Greenpeace continued to work with the government to address destructive bottom trawling. Mr. Sauven met with the Secretary of State for Environment, Food and Rural Affairs, George Eustice in January 2022.
4. At the hearing, the MMO expressed why it considered the prosecution was in the public interest.
5. On 12 January 2022, the learned Judge set out his observations concerning MMO's continued prosecution under the heading "public interest" including the following:

One of the ironies of this litigation is that both the MMO and Greenpeace are committed to improving the marine environment. Greenpeace assert that their protest was in the public interest, while the MMO assert it is in the public interest to prosecute them for it.

The MMO is a creature of statute and Greenpeace a campaigning charity, but both are committed to protecting and preserving the marine environment in places such as Brighton Offshore. The MMO purports to do so by enforcing the licencing regime under the 2009 Act and Greenpeace by protests such as the one undertaken here. Greenpeace protest was for a perceived lack of marine protection by the UK government and the MMO prosecutes them in the name of marine protection.

The parties in this case should be allies not antagonists; they should be acting in harmony given their stated purpose and objectives are the same. Greenpeace should be a supporter of the licensing regime and the MMO should support the prevention of any harmful deep sea fishing methods over important marine sea- beds. It touches on the absurd that this litigation is happening at all. The MMO say that it is in the public interest to prosecute the Ds.

The reasons given to me in court were: (1) not to enforce this breach of the licensing regime would bring the regime into disrepute and (2) not to enforce would look like favouritism by the MMO towards a well-known organisation. That is not, in my opinion, how the public interest test whether or not to prosecute should operate. For example the CPS regularly choose not to prosecute, or elect to discontinue a prosecution, for many varied public interest reason that neither bring the criminal law into disrepute nor attract intimations of favouritism. On the contrary the decision not to prosecute, when the evidential test is met and the public interest test is not, can be evidence that the rule of law is being followed not undermined. Discontinuing a prosecution because it is not in the public interest is not a precedent that adversely influences future enforcement action (and certainly would not preclude future action against these Ds). Each case is fact specific and should be not be overly influenced, in this court's view, by the integrity of a legal system nor dependent on how famous the person or organization charged is. I require the MMO, given the unusual facts of this case, to reconsider whether or not it is in the public interest to continue with this prosecution.

MMO to Offer No Evidence

6. On 26th January 2022, the MMO produced a document in writing and concluded that it would offer no evidence.

7. The MMO expresses surprise in its written document (§5) at the Judge making his observations. This surprise is not shared by the defence. A Judge is able to make observations in criminal proceedings for the prosecution to reflect upon, and without invitation of the defendant.

8. It is trite that a court cannot interfere in a prosecution. Whether a prosecutor takes account of a Judge's observations is a matter for the prosecution.
9. Greenpeace also had been prepared to move to the next stage of the legal argument and to argue that the enforcement was unlawful, and that the prosecution was an abuse of process.
10. Greenpeace welcomes the decision of the MMO to offer no evidence and not to drain further resources of taxpayer and Greenpeace.
11. Greenpeace does not seek to reply to the MMO's responses to the Judge's observations save with the following headlines:
 - a. The decision to cease the prosecution is welcomed as sensible and rational.
 - b. The MMO's justification for the prosecution to date indicate that they demonstrate a lack of awareness of the success of Greenpeace's work for the environment – both at government level and in its campaigns, over the previous half a century.
 - c. Greenpeace does not engage with the MMO interpretation of protest law and criminal law proceedings; save that it does not agree with its summary.
 - d. The court in its judgment that the UK has jurisdiction to prosecute does not express "support" of the licensing regime (§31).
 - e. A Jurisdiction finding is not a determination that enforcement was lawful or that a license was required (§27 and §28).
 - f. As expressed in court, having campaigned for effective licensing, Greenpeace remains willing to work with the MMO for effective licensing of fishing vessels and methods of fishing that protect MPAs and the wider marine environment.

Judge's Proposal - Procedure

12. On 3 December 2021, the prosecution preferred its indictments which were joined (part 10 CPR 2020). The right of the MMO to discontinue therefore is not available (Arbhold Appendix B-191).

13. The MMO's (§33 and 34) relies on a section of Archbold (4-256) which addresses the position where a defendant already has been arraigned.

14. The defence agrees with the Judge's proposal pursuant to the Criminal Justice Act s.17 (as amended by the CJA 2003 s.331 and Sch. 36 para. 42) that Mr. Sauven and Greenpeace are required to be arraigned and that the MMO then offers no evidence. Counsel (myself) will enter a not guilty plea on behalf of Greenpeace.

15. The MMO has produced a further amendment to the indictment preferred (circulated by email 12 January 2022) concerning "misnumbering of count 4". It is suggested that the amendment be made to the preferred indictment and then this final indictment be put to the defendants.

16. Greenpeace does not pursue wasted costs against the MMO or apply for costs from central funds.

4 February 2022

Kirsty Brimelow QC

Doughty Street Chambers