

The content of this document is taken from legal advice issued by a solicitor to the Open Air Mission in April 2007. It has been reproduced by kind permission of OAM and its solicitor.

The law relating to street evangelism

I have been asked to provide a basic letter of advice on the current state of the law as it may affect those seeking to use public spaces to preach their Christian faith to members of the public, which preaching may involve a single display board and the distribution of free literature. I have tried to use what I hope are helpful headings, although there is some overlap and it should be understood that the advice really should be read in its entirety.

Criminal matters:

The current leading legal authority is *Redmond-Bate v Director of Public Prosecutions* [1999] EWHC Admin 732 (23rd July 1999) Case no: CO/188/99 Queen's Bench Division (Divisional Court). Ms Redman-Bate was preaching in the street with two others. Some of the crowd were showing hostility towards them. Fearing a breach of the peace, PC Tennant asked the women to stop preaching, and when they refused to do so arrested them all for breach of the peace. Ms Redmond-Bate was subsequently charged with obstructing a police officer in the execution of his duty and convicted. The Divisional Court overturned the decision. The leading judgment was given by Lord Justice Sedley.

The relevant law being considered was Section 89(2) of the Police Act 1996, the charge being wilful obstructing a police constable in the execution of his duty. In this case, the duty alleged to be being obstructed was the prevention of breaches of the peace. The policeman involved being apparently concerned that the activities being undertaken (which were evangelical in nature) could lead to a breach of the peace.

The following principles are clear from this case from the leading Judgment of LJ Sedley in relation to matters addressed in this case.

Is there an imminent threat?

The issue was whether or not the constable had acted reasonably in reaching that view. However, the Court went on to hold that *"A judgment as to the imminence of a breach of the peace does not conclude the constable's task. The next and critical question for the constable, and in turn for the Court, is where the threat is coming from, because it is there that the preventive action must be directed."*

Where is it coming from?

"The question for PC Tennant was whether there was a threat of violence and if so, from whom it was coming. If there was no real threat, no question of intervention for breach of the peace arose. If the appellant and her companions were... being so provocative that someone in the crowd, without behaving wholly unreasonably, might be moved to violence he was entitled to ask them to stop and to arrest them if they would not. If the threat of disorder or violence was coming from passers-by who were taking the opportunity to react so as to cause trouble..., then it was they and not the preachers who should be asked to desist and arrested if they would not" [my emphasis].

Freedom of speech

LJ Sedley made the point *"Nobody had to stop and listen. If they did so, they were as free to express the view that the preachers should be locked up or silenced as the appellant and her companions were to preach"*

LJ Sedley confirmed free speech *"includes not only the inoffensive*

but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having."

"To proceed... from the fact that... preaching about morality, God and the Bible (the topic not only of sermons preached on every Sunday of the year but of at least one regular daily slot on national radio) to a reasonable apprehension that violence is going to erupt is, with great respect, both illiberal and illogical. The situation perceived and recounted by PC Tennant did not justify him in apprehending a breach of the peace, much less a breach of the peace for which the three women would be responsible."

Pursuing lawful conduct

Lord Justice Sedley added *"A police officer has no right to call upon a citizen to desist from lawful conduct. It is only if otherwise lawful conduct gives rise to a reasonable apprehension that it will, by interfering with the rights or liberties of others, provoke violence which, though unlawful, would not be entirely unreasonable that a constable is empowered to take steps to prevent it."*

The situation would be different if the conduct was calculated to provoke violent and disorderly reaction. For example, *"if the public promotion of one faith or opinion is conducted in such a way as to insult or provoke others in breach of statute or common law, then the fact that it is done in the name of religious manifestation or freedom of speech will not necessarily save it. It may forfeit the protection of Articles 9 and 10 by reason of the limitations permitted in both Articles (provided they are necessary and proportionate) in the interests of public order and the protection of the rights of others."* I have dealt more with the Human Rights aspects below

It is helpful to note that in the *Redman-Bate* case the Court held that there was no suggestion of highway obstruction by those involved (she was preaching in conjunction with two others at a fixed spot). Whilst the addition of a display in relation to OAM obviously increases the element of obstruction, it is hardly the largest degree of increase in obstruction imaginable. Again I deal with this in more detail below

Bye-laws

There may always be bye-laws and it is not possible to cover every possibility. Where it is alleged that there is an infringement of a bye-law, seek clarification (preferably in writing) of the bye-law and how it has been infringed as well as how it is considered that infringement can be avoided.

Civil Matters:

Obstruction

Section 130 of the Highways Act 1980 relates to permanent or semi-permanent obstruction of a right of way. It enables the Council to take action to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the Highway Authority.

Section 137 of the Act governs the offence of obstruction of the Highway. A highway obstruction has been defined by the courts as *'something which permanently or temporarily removes the whole or part of the highway from the public's use altogether'*.

As this would cover stopping to talk to a friend, no obstruction is committed where there is lawful authority or excuse. This is commonly understood to mean that the reasonableness of the obstruction must be taken into account.

Action to remove the obstruction

Under Section 149(1) of the Act a Council would need to identify that a nuisance is being caused, then require removal of the nuisance by notice, and can apply to the Magistrates Court for removal and disposal order if the person fails to remove the nuisance.

Under Section 149(2), immediate action can be taken when there are reasonable grounds to consider a danger is being caused the obstruction can be removed forthwith. There must be a clear danger though.

Reasonableness

Reasonableness of the case must be taken into account. In terms of reasonableness and weighing it up, it is more sensible to enter into a dialogue to understand any concerns that may be expressed in order to address them than ignore them completely – after all a concern may prove to be well-founded.

Typical considerations would include “amenity” and “public safety”. In terms of amenity, consideration should be given to the effect of any display on the immediate neighbourhood where it is displayed. What impact does it have on its surroundings? In terms of public safety, is the display or its location likely to be so distracting or so confusing that it creates a hazard to, or endangers, people in the vicinity who are taking reasonable care for their own and others’ safety?

Other sensible considerations would include:

- Having displays temporary, so they can easily be removed
- Having displays not interfering with other street furniture or signs
- Minimising any obstruction by ensuring a good width for pedestrians to pass by
- Not blocking pedestrian visibility
- Being sensitive to other reasonable needs of the area –
- Avoiding areas of highly concentrated pedestrian flow
- Being sensitive to those with mobility disabilities who may need to negotiate any obstruction
- Keeping any board stable
- Ensuring no damage to the fabric of the highway
- Removing all displays at the end of the day
- Limiting the duration of any display
- Complying with any requests of others in the area, for example shop owners.

Similar considerations would apply in deciding whether or not there is a nuisance, but additional factors may be taken into account such as words used and volume. Conduct can be such that the nuisance may justify an anti-social behaviour order (ASBO), regardless of how socially beneficial it may be believed the message being preached is.

Against this will be weighed considerations such as the purpose of the display, the physical extent of any obstruction caused and its duration.

For example, in 2002 the High Court held Brian Haw’s (Iraq war protester) pavement obstruction was not unreasonable. Mr Haw was permanently encamped in Parliament Square and had been there for 16 months at the time. His right to freedom of speech and the fact that the placards only took up 2 feet of an 11 feet wide pavement led Mr Justice Gray to hold that:

“I am not satisfied in the circumstances of this case that there is any pressing social need to interfere with the display of placards so as to protect the right of others to pass and re-pass [the highway].”

“Looking at the issue of reasonableness in the round and taking account of the duration, place and purpose and the effect of the obstruction, as

well as the fact that the defendant is exercising his convention right, I have come to the conclusion that the obstruction for which the defendant is responsible is not unreasonable,”

Whenever it would be sensible to seek any further guidance on how what you are doing could be even more reasonable (within the boundaries that are non-negotiable for you) then this should be done.

Human Rights

In terms of the purpose of the display, a crucial factor is that this is an exercise of a right under the European Convention on Human Rights, namely the freedom of belief and the right to manifest that belief.

Article 9 confirms that *“Everyone has the right to freedom of thought, conscience and religion” and “in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”* And that *“Freedom to manifest one’s religious beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”*

It has been commonly accepted by the Courts that there is a wider benefit to and a legitimate purpose for expressing Christian religious beliefs. There is therefore a balancing exercise between these rights and any imposition caused by their being exercised

Article 10 dealing with Freedom of Expression is also relevant for similar reasons.

Distributing materials:

I am assuming the materials themselves are not such as to cause a public order or other offence.

The Clean Neighbourhoods and Environment Act 2005 does provide powers to limit the distribution of free materials and creates a potential offence where there is a wilful breach (s23).

However, firstly it needs to be “designated land”. Therefore, if the land has not been designated then this is not relevant. It would be unusual to not be informed that the land is designated. Where it is designated, this applies to the land rather than a specific distributor and you should not be singled out.

Secondly, even if it is designated land, there is a blanket exemption under Section 1(4) of Schedule 3A of the Act, where the distribution of printed matter is *“for the purposes of a religion or belief”*.

Therefore I cannot conceive of any circumstances where the Act could be relevant

Otherwise, any general concerns can be met by the way you conduct yourselves, for example where you can see hand outs have been improperly discarded, dispose of them properly. Be well mannered, do not force hand outs upon people or abuse those who do not accept them.

Codes of Practice

Many Councils are introducing guidelines and voluntary codes of practice, but these should not be confused with legal obligations. These guidelines are helpful in understanding what Councils may consider to be reasonable (although they are not conclusive in this regard).

If a request is being made it is sensible to seek clarification if whether it is alleged to be a legal obligation – in which case always get clarification, preferably in writing, of the alleged legal obligation as well as seeking to enter into a dialogue about ways this concern can be addressed (beyond the specific demand that may be being made on this occasion).

It may also be sensible to have a central point of contact within the organisation so that if there are any concerns, individual can refer those queries to someone specific able to take a consistent approach and having a fuller understanding of the issues.

This is provided for information purposes only and should not be taken as a substitute for legal advice.



CHRISTIAN INFLUENCE IN A SECULAR WORLD