

Alistair Trotman

v

Surrey Fire and Rescue Service

On 25 April 2019, officers of the Surrey Fire and Rescue Service (hereinafter SFRS) served an enforcement notice on the appellant, Alistair Trotman, in respect of a vessel known as RoR (previously known as Rhythm of the River). The notice was served under the powers vested in SFRS under the Regulatory Reform (Fire Safety) Order 2005 (hereinafter FSO 2005). Service of the notice followed an inspection of the vessel by SFRS officers on 11 April 2019 when the vessel was moored on the River Thames.

Mr Trotman subsequently appealed to the magistrates' court against the issue of the enforcement notice and that appeal was dismissed by DJ(MC) Wattam in a written judgment delivered on 28 November 2019.

Mr Trotman then appealed against that decision to this court. The matter was originally listed for a two-day hearing on 21-22 May 2020, but, due to Covid19 difficulties, was then adjourned. We heard the appeal on the 12-13 November 2020.

The evidence:

Both the appellant and the respondent submitted evidential bundles in advance of the hearing. We heard evidence from:

- Witness aboard
- Fire officer Elliott Beagles
- Fire officer Christopher Wiggins
- Assistant Group commander Neil Prime (read as an agreed statement)

- Alistair Trotman
- Gary Paget

In addition, Mr Trotman referred us during the hearing to the following statements:

- A statement described by Mr Trotman as being that of 'various shipmates' dated the 2 March 2020;

- The statement of Stuart Ballard dated 8 March 2020;
- Two statements of Ms Breznik dated 1 May and 14 October 2019;
- The statement of Mr C Chapman dated 16 October 2019.

Our Findings on the Facts:

[To a significant extent, Mr Trotman did not challenge the evidence of the respondents, preferring instead to base his appeal argument on the issue of whether FSO 2005 applied to RoR. To that extent, much of the respondent's evidence was not contentious and has been adopted by us].

1. Surrey Fire & Rescue Service (SFRS) is an 'enforcing authority' under the Regulatory Reform (Fire Safety) Order 2005 (hereinafter FSO 2005). As such, SFRS has the power to serve an enforcement notice under regulation 30 of the Order.
2. The witness aboard booked two nights on the houseboat RoR through the booking site 'Booking.com' in February 2019. She paid £50 for a two-night stay. In the event, she was accommodated on another of Mr Trotman's boats, KUPE. She described the conditions in which she found herself as 'shambolic'. On the deck at ground level, there were no windows and no visible fire escapes. She was given no fire safety instructions or shown the position of any fire escapes, fire blankets or extinguishers. There was an improvised hasp and staple 'lock' on the outside of her cabin and she feared being locked in the cabin. She struggled to pass along the narrow corridor with her bag and the following morning, struggled to exit through the upper deck doors because they had been blocked by bikes. Following her stay, she immediately complained about the conditions she had encountered – first to police officers and then to Surrey Fire and Rescue Service.
3. On 20 March 2019, officers of the SFRS – Christopher Wiggins and Holly Davey inspected KUPE. Mr Trotman was present. The officers ascertained from Mr Trotman that he was the owner of four vessels – including KUPE and RoR – and that he operated the vessels as a commercial enterprise by renting cabins out on both long and short term lets. Such was the condition of KUPE that an immediate Prohibition Notice was served. Conditions on KUPE were subsequently found to substantially mirror those on RoR.

4. On 11 April 2019 officers of the SFRS – Christopher Wiggins and Neil Prime inspected the vessel RoR which was then moored on the River Thames within the jurisdiction of SFRS.
5. RoR is owned by Mr Trotman. It is a relatively large converted barge which has a number of rooms on board which are advertised for rent on various websites including booking.com and londonriverrooms.co.uk.
6. When in the UK, Mr Trotman lives variously on the different boats owned by him. He has, however, made regular trips to France and to New Zealand in recent years.
7. Mr Trotman owns other vessels which have been the subject of enforcement action by other enforcement authorities. Mr Trotman's vessels have also been the subject of local and national media interest and concerns about their safety have been evident for some time.
8. The witness Eliot Beagles of the Environment Agency gave evidence about the location of Mr Trotman's vessels including RoR. He produced a map of the area showing the various locations at which RoR had been moored. He told us that Mr Trotman has moored his vessels at various places in and around Molesey in Surrey without permission and without owning the land to which they were moored. He described how RoR was removed by the Environment Agency in April 2019 away from Molesey lock because the Agency adjudged that it was blocking the passage of other vessels. He described the enforcement action that the Environment Agency has taken against Mr Trotman over the years and the various re-locations of his boats in response to such actions. He told us that a Boat Safety Inspection of RoR had been carried out on 9 January 2020 and that the vessel had failed the gas safety test carried out on all equipment on board the vessel that used gas. We conclude that at all relevant times, RoR was moored within the jurisdiction of SFRS.
9. Mr Trotman charges residents to stay in the cabins and residents stay on board for both short periods of a few days and longer periods of several months or even years.
10. RoR has no engine and is not capable of propulsion. However, it can be towed along the river to different locations and the location of RoR has changed on a number of occasions albeit within the same rough area of the Thames in and around the Hurst Park area in Hampton, Surrey. In the days leading up to

commencement of this appeal, the vessel was towed from its mooring on one bank of the river to the opposite bank. Mr Trotman told us that this was to maximise the amount of solar powered electricity generated by solar panels on RoR, but it is more likely, in our view, that this was a device to remove RoR from the jurisdiction of SFRS – the opposite bank falling within the jurisdiction of the London Fire Brigade.

11. At the inspection of RoR carried out on 11 April, the officers noted the following (images of the visit were recorded on Fire Officer Wiggins body worn video camera):

- the vessel was moored to the bank of the River Thames. The vessel was approximately 15m long and 5m wide. It appeared to be of steel construction with a large cabin fixed to the upper deck;
- the gangplank consisted of two lengths of a metal ladder lashed together with scaffold boards tied on top. During use, the gangplank buckled in the middle. There was a wooden handrail that angled from the side of RoR to the side of the ladder, but which did not reach the full length of the ladder. This meant that the handrail was not usable until approximately halfway across the gangplank;
- the upper deck incorporating the main cabin had entrance doors at both the bow and the stern and housed the main kitchen/living area, a toilet, shower and storeroom. This was a shared area for those living on board;
- the lower deck was made up of approximately ten bedrooms with various sizes of bed;
- there were three hatches to access the lower deck, two via the kitchen/living area and one at the stern;
- the windows in the vessel were not fire resistant;
- in the bedrooms, the officers noted fibreglass insulation under a hardboard outer layer on the walls. Some of the ceilings were lined with cut down internal lightweight doors;
- the main source of heating was provided by a log burner situated in the middle of the corridor of the lower deck. There was a notice

inviting those staying on the vessel to top up the log burner at night;

- the outer protective layer of electrical cabling appeared to be in reasonable condition although there were a number of exposed electrical connectors;
- there were several domestic single point battery operated smoke detectors on the ceilings which worked when tested. There was no emergency lighting;
- there was a floating pontoon anchored to the side of RoR as a means of escape from RoR, although the officers noted that anyone jumping onto the pontoon would have to either then enter the river or scramble up the steep slope of the river bank in order to fully escape from the vessel;
- Mr Trotman showed the officers fire training records for those living on board. These were written on the back of a cereal packet. Mr Trotman referred the officers to a boat safety certificate which he told them had been granted for the vessel.

12. The officers concluded that whilst the level of workmanship and materials used were of a very poor quality, the risk to life was not so serious that it warranted the service of a Prohibition Notice. However, they did conclude that the risk to life required the service of an Enforcement Notice.

13. The Enforcement Notice confirmed that, in the officers' opinion, Mr Trotman had failed to comply with the provisions of FSO 2005 because people were unsafe in respect of the vessel RoR in case of fire.

14. The Notice set out the nine actions which Mr Trotman would need to undertake in order to comply with the requirements of FSO 2005. The notice gave a period of sixteen weeks for compliance to be achieved.

15. The nine requirements (paraphrased) were to:

- i. carry out a suitable and sufficient fire risk assessment to reflect the level of risk within the vessel;

- ii. provide and install a fire alarm that complies with BS 5839-1 Grade D LD2;
- iii. ensure that everyone could evacuate quickly and safely by providing a safe route from the lower deck and the main deck of the vessel. This was to include a larger opening at the centre exit with a grab rail to help ascend the ladder. The head height also needed to be improved. Handrails were to be fitted to all areas of the vessel used for access and egress in an emergency. This to include the gang planks. Those areas were to be kept clear of all obstacles that would impinge a safe exit. That also included the use of a rope – a lift up bar, however, would be more suitable;
- iv. ensure that the means of escape route is kept free from fire and smoke for a period of thirty minutes by having the walls and ceiling constructed from materials that are fire rated to class 0. A different method of fencing the coal burner off was required so as not to restrict the means of escape;
- v. ensure that door sets that can resist fire and smoke for thirty minutes are provided in all rooms with the exception of the two toilets. Both corridor doors (currently glass doors) must also be to FD30S standard.
The term 'door set' to include the complete element as used in practice:
 - the door leaf or leaves;
 - the frame in which the door is hung;
 - hardware essential to the functioning of the door set;
 - intumescent seals and smoke sealing devices. In the case of double doors, to ensure that they close without affecting the operation of the seals.
- vi. ensure that escape routes in the vessel are illuminated by emergency lighting that will operate if the local lighting circuit fails. The system should conform to BS 5266;
- vii. construct sleeping areas on the lower deck and main deck from thirty-minute fire resistant materials to ensure that fire and smoke cannot pass through;

- viii. provide clearly visible fire action notices explaining fire procedures and what is required of people in case of fire in locations where people will see them;
- ix. ensure that means of detection and warning of fire is properly tested and maintained. This should be to the relevant British Standard.
Ensure that the emergency lighting is properly tested and maintained. This should be to the relevant British Standard.
Fire testing and self-closing doors to be inspected to ensure that they provide the required fire resistance and are effectively self-closing.

16. In response to these requirements, Mr Trotman told us that:

- i. whilst the Fire Safety Notice focussed on potential hazards, he preferred to focus on risk. He told us that he prioritised people's health and saw the risk from mould and condensation as being more of a health hazard than that from fire or smoke. He had undertaken his own risk assessment using a form downloaded from the website of the West Yorkshire FB. He had also, eventually, paid for his own assessor to inspect RoR. We note that the assessor concluded that the risk to life from fire at these premises was moderate;
- ii. he had now installed a fire alarm system which was interlinked;
- iii. he accepted that it would be necessary for anyone using the ladder to exit the vessel to have to rotate their body by 180 degrees at the top of the ladder and that he was prepared to cut the table area in order to raise it;
- iv. the coal burner has now been fixed so as not to impede the exit;
- v. gaps had deliberately been left at the top and bottom of bedroom doors in order for warm air to circulate. Residents using the bedrooms often left doors open in order for the warm air to circulate. He accepted that fire and smoke could enter the bedrooms through the gaps, but felt it better for it to do so in order that the smoke alarms would be triggered. He accepted that he had used a plastic cladding on top of the steel frame of the boat as a second tier of fire resistant cladding. This would not burn, he told us, it would melt. He did not think it appropriate to use plasterboard with thirty-minute fire resistance properties because

condensation on the boat would collapse the plasterboard within a few months;

- vi. there is a 24/7 light on the stairwell although this is not emergency lighting – it is powered from the vessel's photo-voltaic panels. All guests are provided with a LED torch which is to be used as emergency lighting;
 - vii. this would require a major re-construction of the cabins to construct cabins from thirty-minute fire resistant materials. The vessel is constructed from six steel partitioned units. Fire resistant materials have already been used on the exterior, it would be a redundant exercise to do the same in the interior;
 - viii. fire action notices are now provided. All those who stay on RoR are given induction fire training. Mr Trotman accepted that training records had been provided to fire officers on the back of a cereal packet, but felt that what he had done was sufficient for a private dwelling;
 - ix. the vessel now has regular 'Fire Alarm Fridays'. There is no written document to prove testing and maintenance of the system.
17. Mr Trotman told us in evidence that people rent what he described as 'private dwelling' rooms on RoR with private sleeping places and that there are 12 cabins with space for one or two persons in each cabin (Mr Paget thought that there were 14 cabins). Tenants stay on a long-term basis or for a day or two at a time on an 'AirBnB' basis. He told us of the fire safety matters which he had put in place including prohibiting smoking and the use of private electrical equipment on board. He confirmed his view that RoR is covered by the Boat Safety Scheme ('BSS'). He stated that convection was required around the vessel in order to ensure that damp and condensation did not build up. He also stated that in December 2016 he was visited by members of London Fire Brigade who inspected all three of his vessels and gave him some smoke alarms.
18. The joint letter from various 'shipmates' of RoR to SFRS sets out a view of fire safety issues on RoR, but ends with a request that RoR be permitted to retain its current set up.
19. Mr Paget's statement sets out the domestic arrangements on RoR and states that he has no concerns with fire safety on board the vessel.

20. Mr Ballard's statement also sets out the domestic arrangements on RoR and repeats the assertion that it is a home and not a commercial activity despite accepting that he pays £275 per month to Mr Trotman and that other residents pay the same amount.
21. Mr Chapman's statement confirms that in December 2016 fire officers came to visit three vessels owned by Mr Trotman (RoR, Hui and OKC). and provided smoke alarms to Mr Trotman.
22. Ms Brezick's statements describe how the residents of RoR sleep with their doors open, how none of the rooms had locks on and how communal property such as stoves and linen were stored in the bedrooms. She also gave evidence about how the occupants of RoR shared tasks such as cooking and cleaning and shared products for cleaning and heating.
23. Despite the description given by both Mr Trotman and some of his witnesses as living on RoR being the equivalent of a 'normal household occupation as a private home' we find that, at the relevant time, Mr Trotman was renting out rooms on RoR on a commercial basis. We do not accept his description of those living on board RoR as 'shipmates' or 'helpers'. Those living on RoR were paying a commercial rent for which they were provided with the use of a bedroom and a shared use of the communal spaces such as the living room/kitchen and the toilets.
24. Mr Trotman also provided us with a Fire Risk Assessment dated 29 October 2019 prepared on behalf of Mr Trotman by a company called Surrey Fire and Safety Limited. This was some 6 months after the Enforcement Notice was served. The report highlights that the fire risk assessor considered that all the residents of RoR are considered at risk and that the 'overall risk rating' for the vessel was declared to be 'a substantial risk'.
25. Mr Trotman also provided us with a document dated 14 October 2020 – a certificate issued by the Boat Safety Scheme of four years duration from the date of issue. The certificate states that RoR 'meets all the applicable minimum safety standards. The Boat Safety Scheme is described on the accompanying documentation as a 'public safety initiative between Canal and River Trust and the Environment Agency designed to ensure, through independent verification, that boats meet the navigation authorities' minimum safety requirements. We will return to the relevance of the Boat Safety Scheme later in this judgment.

26. Having heard from Mr Trotman on his various responses to the requirements in the Fire Safety notice and from his witnesses, we have concluded that his approach to fire safety on RoR is both dangerous and negligent. It appeared to us that he was more concerned in seeking to challenge the legality of the Fire Safety notice rather than in constructing the vessel in such a way as to provide a safe environment for those living there.

The Law

i Burden and Standard of Proof:

We have determined this appeal on the basis that it is for the Respondent (i.e. the SFRS) to show, on the balance of probabilities, that the Fire Officer's opinion which led to the serving of the notice was justified. It is for the respondent to show, on balance, that such a notice was necessary in all the circumstances.

ii The Regulatory Reform (Fire Safety) Order 2005

The following provisions of the Order are relevant:

Article 2 – interpretation:

'domestic premises' means premises occupied as a principal dwelling (including any garden, yard, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such building).

'premises' includes any place and, in particular, includes

- a) any workplace;
- b) any vehicle, vessel, aircraft or hovercraft;
- c) any installation on land (including the foreshore and other land intermittently covered by water (whether floating or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and
- d) any tent or moveable structure.

'risk' means the risk to the safety of persons from fire.

'safety' means the safety of persons in respect of harm caused by fire.

'ship' includes every description of vessel used in navigation.

Article 6 (1)

This Order does not apply in relation to —

- (a) domestic premises, except to the extent mentioned in article 31(10);
- (b) an offshore installation within the meaning of regulation 3 of the Offshore Installation and Pipeline Works (Management and Administration) Regulations 1995;
- (c) a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;
- (d) fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings;
- (e) an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 or a vehicle exempted from duty under that Act;
- (f) a mine within the meaning of section 180 of the Mines and Quarries Act 1954, other than any building on the surface at a mine;
- (g) a borehole site to which the Borehole Sites and Operations Regulations 1995 apply.

Article 8(1):

The responsible person must—

- (a) take such general fire precautions as will ensure, so far as is reasonably practicable, the safety of any of his employees; and
 - (b) in relation to relevant persons who are not his employees, take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe.
- (2) Subject to the preceding paragraph of this article, this Order applies in relation to any premises.

Article 30. Enforcement Notices

- (1) If the enforcing authority is of the opinion that the responsible person or any other person mentioned in article 5(3) has failed to comply with any provision of this Order or of any regulations made under it, the authority may, subject to article 36, serve on that person a notice (in this Order referred to as “an enforcement notice”).
- (2) An enforcement notice must—
 - (a) state that the enforcing authority is of the opinion referred to in paragraph (1) and why;
 - (b) specify the provisions which have not been complied with; and
 - (c) require that person to take steps to remedy the failure within such period from the date of service of the notice (not being less than 28 days) as may be specified in the notice.

Article 35 - Appeals

- (1) A person on whom an alterations notice, an enforcement notice, a prohibition notice or a notice given by the fire and rescue authority under article 37 (fire-fighters' switches for luminous tube signs) is served may, within 21 days from the day on which the notice is served, appeal to the court.
- (2) On an appeal under this article the court may either cancel or affirm the notice, and if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.
- (3) Where an appeal is brought against an alterations notice or an enforcement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.
- (7) A person aggrieved by an order made by a magistrates' court on determining a complaint under this Order may appeal to the Crown Court; and for the avoidance of doubt, an enforcing authority may be a person aggrieved for the purposes of this paragraph.

Grounds of Appeal:

Mr Trotman's appeal notice (as finalised) covered six separate areas:

- a) The FSO 2005 does not apply to RoR because:
 - i. ROR is a ship regulated solely by the Merchant Shipping Fire Protection (Small Ships) Regulations 1998; and/or
 - ii. fire safety on RoR is covered by the Environment Agency (Inland Waterways) Order 2010 which sets out a system called the Boat Safety Scheme administered by the Environment Agency.
- b) FSO 2005 does not apply as SFRS are not permitted under the FSO to enforce against a vessel which is not fixed and floats in and out of SFRS boundaries.
- c) FSO 2005 does not apply as ROR is a domestic premise.
- d) FSO 2005 does not apply as ROR is not permanently moored over the same footprint of land.
- e) The Enforcement Notice was ultra vires as obligations set out in FSO 2005 were not adhered to in this case namely i) the Enforcement Notice not correctly registered, ii) the Notice is disproportionately onerous, iii) service of the Enforcement notice was unnecessary, iv) the fire safety provisions on the vessel satisfied the obligations set out in the Order
- f) The order for costs made in the Magistrates' Court should be struck out.

Submissions on the grounds of Appeal:

(a)(i) FSO 2005 does not apply to RoR because ROR is a ship regulated solely by the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998

1. Mr Trotman argues that RoR is not covered by FSO 2005 because it is a Class 1X (A) ship as defined in the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998. He suggests that by dint of his occasional habitation on board RoR together with the communal activities carried out by those residing

there (his shipmates) then the situation is analogous to that of a ship's master and his crew.

2. The respondent argues that the main obligation within FSO 2005 is for the responsible person '*in relation to relevant persons who are not his employees, [to] take such general fire precautions as may reasonably be required in the circumstances of the case to ensure that the premises are safe.*' (Art. 8(1)(b)).
3. 'Premises' are defined in Article 2 as including any place and, in particular, including—
 - (a) any workplace;
 - (b) any vehicle, vessel, aircraft or hovercraft;
 - (c) any installation on land (including the foreshore and other land intermittently covered by water), and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and
 - (d) any tent or movable structure.
4. RoR is a vessel in that RoR floats above the water, carries things and people and, although it lacks propulsion, can be pulled or tugged from one part of the river to another.
5. Mr Trotman's reliance on article 6 is misplaced:

(1) *This Order does not apply in relation to—*

- (a) *domestic premises, except to the extent mentioned in article 31(10);*
- (c) *a ship, in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;*

6. Ship in turn is defined as

“ship” includes every description of vessel used in navigation;

7. However, Article 6(1)(c) cannot act so as to disengage RoR from FSO 2005 because Article 6(1)(c) is specifically limited to apply solely to 'the normal ship-board activities of a ship's crew carried out ...under the direction of the master'.

The residents aboard are not 'crew' who are carrying out normal ship-board activities and there is no 'master' on board RoR giving orders.

8. Mr Trotman suggests that RoR is a Class IX(A) ship as defined in the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998. Mr Trotman suggests that as it falls under the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, FSO 2005 can have no application. However, the question of whether RoR is a small ship of Class IX(a) does not need to be determined in this appeal. FSO 2005 explicitly applies to vehicles, vessels, aircraft and hovercraft. So long as the activities on the vessel are not normal shipboard activities carried out solely by the crew under the direction of the master, then FSO 2005 applies.

a(ii) Fire safety on the River Thames is covered by the Environment Agency (Inland Waterways) Order 2010 which sets out a system called the Boat Safety Scheme administered by the Environment Agency

9. Mr Trotman argues that the Enforcement Notice is otiose because the Boat Safety Scheme administered by the Environment Agency covers the safety of boats and as RoR is in receipt of a valid boat safety scheme certificate SFRS cannot serve an enforcement notice under FSO 2005.
10. The respondent submits that whether or not the Fire Safety Order 2005 applies to the RoR is determined by interpreting the FSO 2005 and then applying the facts to the law. The fact that there may be overlapping regulatory regimes is irrelevant. Any BSS inspection cannot usurp the important safety function that Parliament has empowered Fire Safety Officers of Surrey Fire and Rescue Service to perform under FSO 2005.
11. The respondent further argues that the Environment Agency (Inland Waterways) Order 2010 does not usurp the fire safety functions of FSO 2005 because the 2010 Order creates a new uniform registration system for vessels

on inland waterways but does not purport to cover fire safety. Article 10(5)(b) of the Inland Waterways Order specifically permits the Environment Agency to disclose information to 'the fire authority for any area in which the waterways are situated'. If the issue of fire safety was solely reserved to the Environment Agency then, argues the respondent, why does the legislation permit the Agency to disclose information to the local fire authority?

(b) The FSO does not apply as SFRS are not permitted under the FSO to enforce against a vessel which is not fixed and floats in and out of SFRS boundaries.

12. Mr Trotman has told us in his submissions on the law that RoR moves regularly and is not always moored within the jurisdiction of Surrey SFRS. The respondent argues that the plain words of FSO 2005 permit enforcement against a vessel so long as the activities being enforced are not '*the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master*'.
13. As there is no crew being directed by a master of the RoR, FSO 2005 does apply.
14. At the time RoR was inspected and the notice served, the vessel was situated within the boundaries of SFRS. Since then, RoR has continued to be located within the jurisdiction of SFRS until, just before the hearing of this appeal, it was tugged across the Thames to the opposite bank.

(c) The FSO does not apply as ROR is a domestic premise.

(d) The FSO does not apply as ROR is not permanently moored over the same footprint of land

15. Mr Trotman has told us that the concept of communal living on board RoR coupled with the shared facilities creates a situation akin to what would be found in everyday domestic premises. He relies on Reg. 6:

- (1) *This Order does not apply in relation to—*
- (a) *domestic premises, except to the extent mentioned in article 31(10);*

16. As to Reg. 6(1)(a) domestic premises are defined thus:

“domestic premises” means premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling);

17. The respondent submits that the evidence strongly suggests that RoR is used in common by the occupants of more than one such dwelling. The rooms on the RoR are let out by Mr Trotman to individual residents for profit who use the kitchen and living areas as they wish. The residents are not friends who happen to be staying over on RoR on a very short-term basis. This is Mr Trotman’s business. It is not equivalent to a family having a lodger in their domestic family home.
18. This position is supported by the Department for Communities and Local Government’s Fire Safety Risk Assessment guidance for sleeping accommodation dated 2006 which sets out guidance for applying FSO 2005 and confirms that the guidance applies to ‘*self-catering accommodation (individual and multiple units), chalets, flat complexes, narrow boats and cruisers,...*’. This is statutory guidance which has been provided pursuant to Article 50 and so, argues the respondent, warrants significant weight being placed upon it.
19. Mr Ostrowski, for the respondent, referred us to a Department for Communities and Local Government (DCLG) Fire and Rescue Service monthly bulletin on the application of FSO 2005 to boats – ‘particularly hired narrow boats, cruisers and other sorts of pleasure craft providing sleeping accommodation’ which suggests that the DCLG’s view:

2.1 ... is that FSO 2005 generally does not apply to boats hired for the purposes of holiday or leisure activities’.

2.2 We consider that [FSO 2005] applies to: a) permanently moored vessels (i.e. those which cannot travel) which are rented out on inland waterways and b) to boat yards .

20. However, the respondent further argues that RoR is not a holiday or a leisure vessel, it is a place used as a business by Mr Trotman to provide long term accommodation to paying residents. In addition, the RoR is static and is rented out on an inland waterway (the Thames). While it is capable of being moved it has no means of propulsion and is only moved by dragging the vessel and when compelled to do so. It is permanently moored albeit the place of mooring changes periodically. In any event, the guidance itself begins by confirming that *‘this is not legal advice’*. Neither is it statutory guidance provided under Art. 50. If the vessel is moved outside of the geographical boundaries of SFRS then SFRS would have to consider its options for taking enforcement action for a breach of the enforcement notice. However, that is a different question to whether RoR was within SFRS’s geographical area and whether the Enforcement Notice is valid.

(e) The enforcement Notice was ultra vires as obligations set out in FSO 2005 were not adhered to in this case namely i) the Enforcement Notice was not correctly registered, ii) the Notice is disproportionately onerous, iii) service of the Enforcement notice was unnecessary, iv) the fire safety provisions on the vessel satisfied the obligations set out in FSO 2005.

21. The respondent submits that the experience of Officers Wiggins and Prime cannot be gainsaid. The Enforcement Notice is carefully drafted, weighs up the risk to life with the obligations which it will place on Mr Trotman and sets out a clear set of obligations on Mr Trotman for him to satisfy which are proportionate to the risk.

22. Mr Trotman has not produced any evidence from a fire safety expert. While Mr Trotman may have some experience with boats, he is not an expert as defined under the Civil Procedure Rules and he is a witness of fact. His evidence should not be accorded the same weight as that of the Fire Safety Officers.
23. A demonstration of the independence and robustness of Officers Wiggins and Prime arises from the fact that they considered whether a Prohibition Notice was appropriate but, in the exercise of their judgement, determined that it was not. This shows that the Officers were not disproportionately targeting Mr Trotman or seeking to go too far but carefully calibrated the options open to them and opted to serve the most limited notice which would achieve the end of ensuring safety for those on board.

(f) The order for costs made in the Magistrates' Court should be struck out.

24. Mr Trotman argues that section 18B Fire and Rescue Services Act 2004 which provides statutory limits on Fire and Rescue Authorities from charging for services carried out under their everyday statutory functions applies. This, he submits, applied equally to any costs incurred by SFRS in responding to his appeal under FSO 2005.
25. The respondent argues that Mr Trotman's objections to the costs awarded against him stem from his assertion that SFRS's actions were ultra vires. As the Magistrates' Court Act 1980 applies to these proceedings (FSO Article 35(6)(a)), S.64 Magistrates' Court Act 1980 grants the court the power to make such order as to costs as it thinks is just and reasonable. Mr Trotman's reference to the Fire Rescue Services Act 2004 is irrelevant.

Decision:

We find that:

1. The Regulatory Reform (Fire Safety) Order 2005 provides for a Fire Safety and Rescue Service to serve an enforcement notice on the responsible person

where that person has failed to take such general fire precautions as may reasonably be required.

2. RoR – a converted canal barge – was, at all relevant times, owned by Mr Trotman. For the purposes of the Order, he was and remains the responsible person.
3. RoR – again at all relevant times – was moored on the River Thames at various locations which fell within the jurisdiction of the Surrey Fire and Rescue Service. Mr Trotman’s moving of the vessel – usually in response to anticipated enforcement action of one form or another – does not create some temporary location that takes the vessel outside of the relevant statutory framework.
4. ‘Premises’ in article 2 of the Order is defined as including any vehicle, vessel, aircraft or hovercraft. We find that the use of ‘vessel’ in conjunction with other movable forms of transport covers the situation here where RoR is a converted barge which lacks both engine and steering equipment, but which floats, carries equipment and people and is capable of being moved from one location to another.
5. RoR is a commercial enterprise undertaken by Mr Trotman. The barge has been converted so that individuals can rent rooms from Mr Trotman on a short or long-term basis. Whilst there are, no doubt, activities carried on by those renting rooms which can be described as ‘communal activities’ such are not sufficient to bring the vessel within the ‘domestic premises’ exemption in article 6.
6. Further, Mr Trotman is not the ‘master’ of the vessel in that he does not direct operations on board. Neither can those who choose to live on board be categorised as ‘crew’ taking instruction from Mr Trotman. Mr Trotman does not reside on RoR all the time and spends significant lengths of time out of the UK. Article 6 then, which specifically exempts ‘domestic premises’ and ‘a ship in respect of the normal ship-board activities which are carried out solely by the crew under the direction of the master’ does not apply in this case.
7. Mr Trotman has argued that RoR falls within the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998. We do not feel it necessary to rule on whether or not that is the case. Regulations relating to safety on board any class or size of vessel are not mutually exclusive and the issue for us to determine is whether the notice issued under FSO 2005 was validly issued.

8. Mr Trotman has further argued that the Boat Safety Scheme administered by the Environment Agency covers the safety of boats and renders redundant FSO 2005 in relation to RoR. However, the Environment Agency (Inland Waterways) Order 2010 whilst creating a uniform registration system for vessels on inland waterways does not cover fire safety. Article 10 (5)(b) of the Order specifically permits the EA to disclose information to 'the fire authority for any area in which the waterways are situated'. In our view, if issues of fire safety on vessels on inland waterways were reserved solely to the EA, then there would be no need for the legislation to permit the EA to disclose information to a fire authority. We take the view that the Boat Safety Scheme adds to the overall requirement of safety and conformity on vessels used on inland waterways, but does not supersede the obligations imposed by FSO 2005.
9. In our view, therefore, we are satisfied that the provisions of FSO 2005 applied to RoR at the time the decision to serve a notice was taken. RoR was within the jurisdiction of the SFRS and it was appropriate for SFRS to serve that notice.
10. As to the decision taken by Officers Prime and Wiggins to serve such notice we are satisfied on the balance of probabilities that the Fire Officer's opinion which led to the serving of the notice was justified. Both are experienced fire officers of many years standing. We do not consider the measures proposed by them to be disproportionate or onerous and Mr Trotman's arguments as to why the decision to serve a notice was wrong lacked credibility.
11. Finally, as to the award of costs in the magistrates' court we do not accept the arguments put forward by Mr Trotman. The decision of the DJMC to dismiss the appeal led to his award of costs against Mr Trotman. The costs awarded related not to SFRS's exercise of its statutory duties, but to the costs incurred in responding to Mr Trotman's appeal. It should be no surprise to anyone that costs followed the event.

For the reasons given above, this appeal is dismissed.

We do however suggest two minor amendments to the Fire Safety notice which we understand both SFRS and Mr Trotman agree to:

Requirement #2 – rather than refer to BS 5839-1 to refer to BS 5839 -6. This would reflect the requirement whereby SFRS believe that an equivalent domestic alarm system would be sufficient.

Requirement #6 – the emergency lighting to be powered by battery powered trickle charged photo-voltaic panels fitted to RoR.

COSTS:

Ordered to pay the costs of £26704.50.

‘Just’ in all the circumstances.

R.12 CCR 1982

R v Kuznetsov [2019] EWHC 3910 Admin.

Delivered at Guildford Crown Court on 23 November 2020

HH Judge Jonathan Black

Clare Hubbard JP

Andrew Eldridge JP