

## **Gloucester Crown Court Report**

### **Summary**

On 5<sup>th</sup> July 2018, after a three-week trial and a day and a half of deliberation, the Jury at Gloucester Crown Court returned not guilty verdicts on 16 counts and could not reach a decision on the remaining four counts. This signalled the end of a two and a half year process that started back in December 2015.

At the first hearing in the Magistrates' Court in September 2016, the Magistrates agreed with the defendants' solicitor's view that the matter should be referred to Crown Court. D&S IFCA's decision to prosecute was vindicated by the fact that the body of evidence was left to the Jury as evidence capable of leading to convictions, and despite acquittals, there were four counts upon which the Jury could not reach a verdict. The Judge, Ian Lawrie, made it clear that the case had been properly brought and that a trial was needed to determine the outcome.

The Crown Court case was the only vessel monitoring system based trial to take place so far.

### **Background**

In 2014, the Authority took the decision to sell the main patrol vessel, 'Drumbeat' at 21.9 metres in length, and rely instead on vessel monitoring systems, an intelligence led approach to enforcement and the use of a small 6.4m RIB.

This decision reduced considerably the financial burden on the Authority, in the last full year 2013/14, running costs were £47,000, not including berthing and insurance, and five members of staff to crew her including a dedicated, qualified master. Whenever the boat went to sea there was no other enforcement work that could be carried out in the District. Despite a reduction in the number of D&S IFCA enforcement officers to four, more varied work is now achievable.

This change in approach to enforcement also led to an improved detection rate of illegal towed gear activity (spatial restrictions). In addition to the four prosecutions and four FAPS using only circumstantial evidence including VMS data, a further nine offences were detected using a combination of circumstantial, VMS data and witness evidence and statements. In the three years prior to this change in approach, no such cases were detected. Small, trailered patrol vessels are more difficult for the industry to monitor, and officers are committed to working outside core office hours including weekends and bank holidays, and have also chartered other vessels to undertake their work from.

The Authority's ability to better enforce spatial restrictions and the willingness to take action against alleged fishers improved its reputation considerably amongst both the towed gear and static gear sectors. Law abiding fishers from both sectors are affected by the actions of the minority of offenders in the towed gear fisheries.

The Authority has a robust decision making process that it follows for each investigation. Following completion of the case file and sign off by the Officer in Charge, the evidence is reviewed by the Authority's prosecuting agent to consider whether the public and evidential tests have been satisfied and he advises the Authority on a recommendation to dispose of the case. The prosecuting solicitor is a very experienced fisheries lawyer who also

works for the MMO and Cornwall IFCA (CIFCA). CIFCA use the same decision making process. All solicitors are guided by and must adhere to the Code for Crown Prosecutors. The Chief Officer, with delegated powers from the Authority, takes the final decision on how to proceed. A full range of case outcomes result. For example, in 2017, there were twenty six investigations for which eight Financial Administration Penalties were issued, nine Official Written warnings were issued, five successful Prosecutions achieved, two Official Cautions were issued and two No Further Action cases.

### **Case History**

At the first hearing of the case at Newton Abbot Magistrates' Court, the defendants' solicitor asked the Court to consider whether the case should be heard at Crown Court due to its technical and complex nature. The Magistrates agreed with the defence. The prosecution had been satisfied that the case could have been heard in the lower courts. This case was unusual in that two of the offences were 'either way' offences that could be heard both in a Magistrates' Court and Crown Court. Most of the D&S IFCA's prosecutions are 'summary' offences and can only be heard in a Magistrates Court.

A trial date was set for Plymouth Crown Court on 2<sup>nd</sup> October 2017 but had to be adjourned to 19<sup>th</sup> February 2018. The trial had to be adjourned again after four days without any evidence being heard, due to legal deliberations on whether DCO Mander could be both the Officer in Charge and also expert witness for the Prosecution. A further trial date was set for 18<sup>th</sup> June 2018.

### **Case Review**

The case incurred considerable costs to the IFCA, the public purse and the defendants. After the Jury returned their verdicts, the Judge deferred consideration of defence costs to a later date. In such cases where the Crown loses, the Crown's costs (in this case D&S IFCA) is taken from the public purse and not directly from the IFCA. Although that means that the IFCA does not have the direct financial costs to bear, it is all public money at the end of the day.

Officers are not aware of how much the defence were awarded but it is clear in any such case that companies are not eligible to receive costs - only individuals. The maximum that could be recovered was half the costs as there were four defendants, two of which were companies. Officers do not know what the application was for lost earnings, but both vessels were able to and did continue to fish throughout the investigation and trial period. Officers also understand that despite having a local solicitor that specialised in fisheries law and a counsel from London, the defendant's legal costs could only be recovered to legal aid hourly rates, which are likely to have been far below the rates charged by their legal team.

Instead of a trial at a Magistrates' Court that would have cost considerably less to both sides and resulted in a fine or costs of around £10,000-£15,000 (based on similar outcomes at the time) if found guilty, the time taken from the start of the investigation (Dec 2015) to completion of the trial (July 2018) was over two and half years. Up to the start of the trial at Gloucester, the Authority had spent £36,868.74 on legal costs. The Authority's legal costs for the three week trial were £37,425.96. On additional evidence collection, the Authority spent £8,843, which included additional AIS data, weather and tidal information, and animation of the VMS tracks. The total financial cost to the Authority was £83,137,70.

To bring the prosecution's cost in to perspective, at the end of the adjourned trial at Plymouth Crown Court the defence failed with their application to recover their costs of £36,149 from the prosecution, approximately the same as the total legal costs for the Authority's three week trial in Gloucester. Officers' time relating to this case was considerable and generated mainly by the DCO Mander's involvement in the case. In the investigation and trial period, DCO Mander spent in excess of 460 hours on the case (contracted to approximately 1,930 hours a year).

It was never the Officers' intention to open the Authority to such financial risk or to the defendants. Officers are sometimes disappointed that the fines issued by the courts do not act as a deterrent but it is in no one's interest to risk the future of businesses that has been reported by the media in this case.

### **Decision Making Review**

DCO Mander fully supported the Chief Officer's decision to prosecute the defendants in this case and believed that there was a high probability of securing guilty verdicts. The Gloucester Crown Court case was the only VMS based trial to take place so far. However, prior to this Crown Court case, a case took place in Plymouth Magistrate's court and was set for a trial but a guilty plea was entered on the day of the trial. The evidence in this case was reviewed by the same defence Counsel that represented the defendants in the Gloucester Crown Court Case. Officers remain confident that the level of evidence provided by VMS data, tidal and weather information and logbook evidence can be sufficient to secure a guilty verdict. In the Crown Court case the Authority's Counsel thoroughly reviewed the Authority's case. The Judge, Ian Lawrie, also made the point that the case was properly brought and that a trial was needed to determine the outcome.

A trial review report has been completed by the Prosecution's Counsel and has raised some points where the Prosecution's presentation of the evidence could be improved and how to more effectively dismiss the points raised by the defence.

In addition, the Acting Chief Officer, has taken the decision for the time being, not to take any further cases where the defence has the opportunity to raise the option of having the case heard in Crown Court. This is to protect both parties from the financial reality of such cases. This has led to the Authority dropping the charges in relation to one case but on balance the ACO believes it was the right thing to do at this time. The Authority now has all of the spatial regulations to manage the fisheries in its District covered by byelaws. This means that future cases relating to spatial breaches should only be heard in the Magistrate's Court. The Authority has a further trial scheduled for 26<sup>th</sup> September 2018 at Plymouth Magistrates' Court based again on circumstantial evidence (inc. VMS data). A further review of the Authority's approach to such cases, where only circumstantial evidence is available, will be made following the verdict in that case.

### **Commercial Catching Sector Relationship**

The Authority has come in for criticism from some of the towed gear operators following the court case. There have been questions raised over the Authority's decision making process and pursuing the case against the defendants.

The Authority tries to support the majority of fishers that wish to be compliant with regulation. It provides direct access to the relevant legislation and the reasoning behind the decisions to

restrict their activities, and thoroughly investigates any suspected breaches of the legislation. The Authority's permit system provides all fishers with a comprehensive guide to the permit condition restrictions that are applicable to their fishing activities. In the case of the mobile gear fleet officers are trialling the introduction of memory sticks that have all the restricted areas preloaded that officers intend to distribute freely to fishers and encourage them to update their on-board plotters. Officers also compile comprehensive reports that record the process by which new management is introduced, explaining what evidence was used and what considerations took place prior to the regulation being put in place.

Unfortunately, there are considerable financial benefits to be gained from breaching the regulations and a small percentage of the fleet have decided the risk is worth the reward. It is for that reason officers believe that it is important to demonstrate to the commercial catching sectors (static gear and mobile gear) and conservation interests that the Authority is committed to taking cases to trial, where necessary and appropriate, and find cost effective ways to enforce the legislation to support the conservation and fisheries interests in the District.

The Gloucester Crown Court case also showed that there were weaknesses in the current drafting of the Mobile Fishing Permit Byelaw. Members will start the necessary review of the Mobile Fishing Permit Byelaw and permit conditions at the next Byelaw and Permitting Sub-Committee meeting.