

**IN THE WESTMINSTER MAGISTRATES' COURT**

**BETWEEN:**

**GOVIA THAMESLINK RAILWAY LIMITED**

**PROSECUTION**

**V**

**CHARLES BROHIRI**

**DEFENDANT**

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**INTRODUCTION**

1. The Defendant, Mr Brohiri, appeared at Westminster Magistrates' Court on 20<sup>th</sup> August 2025 in respect of 83 offences either for first appearance or for sentence in relation to offences contrary to section 5(3)(a) of the Regulation of Railways Act 1889. The Prosecution, Govia Thameslink Railway Limited, ("GTR") had previously brought to the court and the defendant's attention that there were procedural matters about the court's jurisdiction that needed to be determined in relation to offences categorised as "Category 1" offences.
2. Mr Brohiri's offending period spans 14<sup>th</sup> February 2024 to 19<sup>th</sup> November 2025, and have been broken down into three categories:
  - (a) **Category 1** – 39 offences between 14<sup>th</sup> February 2024 and 10<sup>th</sup> September 2024. The applications for summonses in these cases were applied for by "lay prosecutors".
  - (b) **Category 2 and 3 offences** – 76 offences between 27<sup>th</sup> January 2025 and 19<sup>th</sup> November 2025. In these cases, the applications for summonses were either applied for by solicitors or initially having been applied for by lay prosecutors were withdrawn and further applications made by solicitors.
3. The case was adjourned for legal argument to 16<sup>th</sup> December 2025 after the prosecution raised several issues the court needed to address. For today's purposes this is the defendant's application.

4. At the hearing on 16<sup>th</sup> December 2025, GTR was represented by Mr Ratliff and Mr Harris and the defendant by Ms Curzon. I have read the bundle of papers provided which includes the Prosecution Note dated 15<sup>th</sup> August 2025, Prosecution Note dated 18<sup>th</sup> September 2025, Defence Skeleton Argument dated 3<sup>rd</sup> November 2025, and Prosecution Skeleton Argument for 14<sup>th</sup> November 2025 and a Note for the hearing on 16<sup>th</sup> December 2025. I heard oral submissions from the parties. Judgment was reserved to 15<sup>th</sup> January 2026.

## THE LAW

5. The law has been set out in the aforementioned documents.
6. The Legal Services Act 2007 (“the Act”) places restrictions on certain activities. Section 12 provides a definition of a “reserved legal activity” which for the purposes of this case is as follows:

“12. Meaning of “reserved legal activity” and “legal activity”

- (1) “In this Act “reserved legal activity” means –
  - (a) The exercise of a right of audience;
  - (b) The conduct of litigation;
  - .....”

7. Schedule 2 para 3(1) defines a “right of audience” as follows:

3(1) “A right of audience” means the right to appear before and address a court, including the right to call and examine witnesses”.

8. Schedule 2 para 4(1) defines the “conduct of litigation” as follows:

- “4 (1) The “conduct of litigation” means –
- (a) The issuing of proceedings before any court in England and Wales;
  - (b) The commencement, prosecution and defence of such proceedings, and
  - (c) The performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)”.

9. Section 18 sets out who are “authorised persons” in relation to an activity (“the relevant activity”) which is a reserved legal activity as

(a) A person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity.....”

10. Section 19 allows for the conduct of reserved legal activity, litigation and/or exercise of rights of audience by non-authorised persons who are referred to as an “exempt person”, as set out in Schedule 3, paras (2) and (3):

*“(2) The person is exempt if the person –*

*(a) is not an authorised person in relation to that activity, but*

*(b) has a right of audience granted by that court in relation to those proceedings.*

*(3) The person is exempt if the person –*

*(a) is not an authorised person in relation to that activity, but*

*(b) has a right of audience before that court in relation to those proceedings granted by or under any enactment”.*

11. Section 20 and Schedule 4 set out who is an “approved regulator” which includes the Law Society and the General Council of the Bar in relation to the exercise of a right of audience and the conduct of litigation. In respect of The Institute of Legal Executives, it is included to the exercise of a right of audience.

12. Para 5A.1 of the 2015 Criminal Practice Directions incorporated Annex D of the Consolidated Criminal Practice Direction 2002 which contains a number of forms to be used in criminal courts in accordance with Crim PR 2020 r5.1.

13. Rule 5.2 requires a person to use an appropriate form as set out in the practice direction when making an application. A specific form must be used. However, in 2023 the 2015 Practice Direction was revoked and replaced with Crim PD 2023. Para 1.1.6 states the Lady

Chief Justice may issue forms for use with the Crim PR. The form to be used to start proceedings in the Magistrates' Courts is at Part 7.

14. Rule 7.2(6) of the Crim PR 2020 requires that an application for a summons must:

*“(a) concisely outline the grounds for asserting that the defendant has committed the alleged offence or offences;*

*(b) disclose –*

*(i) details of any previous such application by the same applicant in respect of any allegation now made, and*

*(ii) details of any current or previous proceedings brought by another prosecutor in respect of any allegation now made; and*

*(c) include a statement that to the best of the applicant's knowledge, information and belief-*

*(i) the allegations contained in the application are substantially true,*

*(ii) the evidence on which the applicant relies will be available at the trial,*

*(iii) the details given by the applicant under paragraph (6)(b) are true, and*

*(iv) the application discloses all the information that is material to what the court must decide”.*

15. Crim PR r.46.1(1) provides:

*“Functions of representatives and supporters*

*46.1 – (1) Under these Rules, anything that a party may or must do may be done –*

*(a) by a legal representative on that party's behalf;*

*(b) by a person with the corporation's written authority, where that corporation is a defendant; or*

*(c) with the help of a parent, guardian or other suitable supporting adult where that party is a defendant –*

*(i) who is under 18, or*

*(ii) whose understating of what the case involves is limited unless other legislation (including a rule) otherwise requires.*

*(2) A member, officer or employee of a prosecutor may, on the prosecutor's behalf –*

- (a) Serve on the magistrates' court officer, or present to a magistrates' court, an application for a summons or warrant under section 1 of the Magistrates' Courts Act 1980; or*
- (b) Issue a written charge and requisition, or single justice procedure notice, under section 29 of the Criminal Justice Act 2003".*

## **SUBMISSIONS**

16. Full submissions are contained in the written arguments. I have set out the oral submissions as follows:

17. On behalf of the defendant Ms Curzon raised the following issues:

- (i) The information laid and summons applied for by a lay prosecutor not being a regulated person is invalid; the conduct of litigation/rights of audience was undertaken by the lay prosecutor who was not a regulated solicitor/barrister;
- (ii) The Crim PR were not followed when applying for a summons and did not contain the required information as specified in the Rules;
- (iii) If the court finds the commencement of the proceedings were valid, there has been an abuse of the court's process under the second limb.

18. Ms Curzon argued the court should either dismiss the Category 1 charges in their entirety as the commencement and conduct of the proceedings were invalid or find that the prosecution's contravention of the Legal Services Act 2007 amounted to a serious abuse of process on the second limb and should be permanently stayed.

### **Issue 1 – The conduct of litigation was undertaken by the lay prosecutor who was not a regulated solicitor/barrister**

19. In relation to the first issue, Ms Curzon argued that the commencement and conduct of the proceedings were invalid because under sections 12-14, and Schedule 2, paragraph 4(1) of the Act only an authorised or exempt person can conduct litigation and appear in court because they are conducting reserved legal activities; there will be a breach of the Act if litigation is conducted without authorisation. GTR is not a regulated body in respect of legal

services and by laying an information and applying for a summons a lay prosecutor commenced the proceedings which rendered them null and void ab initio.

20. To support her submission she relied on the recent case of ***Mazur v Charles Russell Speechlys* [2025] EWHC 2341 (KB)** which held that the conduct of litigation is a reserved legal activity that “*mere employment by a person who is authorised to conduct litigation is not sufficient for the employee to conduct litigation themselves, even under supervision*” [49] and ***Media Protection Services v Crawford* [2012] EWHC 2373 (Admin)** which held the laying of an information is the commencement of proceedings in the magistrates’ court and was “conduct in litigation” in accordance with Schedule 2 to the Act and a “reserved legal activity” within the meaning of Section 12 of the Act [15-24].
21. She further argued that by laying an information the lay prosecutor is in breach of section 14 of the Act and has committed a criminal offence.

## **Issue 2 – Criminal Procedure Rules were not followed when applying for a summons**

22. Ms Curzon also submitted that the prosecution accepting it failed to comply with the mandatory procedural requirements under the Crim PR, Rule 7.2(6) adds further weight to the submission that the proceedings have not been commenced in a proper manner. Reliance was set out in the defendant’s Skeleton Argument in the case of ***R (Kay) v Leicester Magistrates’ Court* [2018] EWHC 2815** (which the prosecution clarified should be ***R (Kay) v Leeds Magistrates’ Court* [2018] EWHC 1233 (Admin)**) where a Divisional Court held that a Magistrates’ Court jurisdiction to issue a summons depended on the proper laying of an information. She sought to persuade the court that this supports her submission that compliance with the correct forms and procedural requirements is not a mere formality but a precondition to valid proceedings.

## **Issue 3 – Abuse of Process**

23. Her final argument was that the proceedings should be stayed as an abuse of process, pursuant to the second limb concerning the integrity of the criminal justice system. She acknowledged that the burden is on the defendant to show on the balance of probabilities that it would be wrong and unfair for the prosecution to continue, arguing that to allow the

prosecutor to proceed after committing a criminal offence under section 14 of the Act would be an illegal prosecution and an affront to the integrity of the criminal justice system.

24. She responded to the principles the prosecution set out in its written submissions concerning the authorities in relation to the limb 2 abuse and argued the wrongdoing in these proceedings was conducting litigation and a trial which led to the defendant being convicted in absence for a number of offences. Furthermore, there was also misconduct in laying the information where summonses were issued, attending the first appearance and conducting the trial. No documents have been provided concerning the acceptance by the industry and court that lay prosecutors can bring prosecutions. It is problematic to accept that because it has happened before it should be allowed to continue. The public interest cannot be served by a large organisation being allowed to conduct litigation in this manner.

#### **Prosecution Response to Issue 1**

25. On behalf of the prosecution, Mr Ratliff agreed that compliance is needed with the 2007 Act but argued the defence have failed to engage with the exception set out in the Act about the commencement of the proceedings. When the Category 1 charges started the Crim PR had allowed for some time for a non-legally qualified person to apply by information to issue a summons pursuant to Rule 46.1 which is a clear exemption to the Act. An analysis of the derivation of rule 46.1 has been provided in the written submissions which shows the rules have consistently provided for an employee of a prosecutor to take certain steps on its behalf.
26. An enactment can include subordinate legislation. Although in section 207 of the 2007 Act, enactment means a provision of an Act of Parliament for the purposes of the definition of a not-for-profit body and thus the draftsman has limited the meaning of enactment, the absence of a similar limitation for the remainder of the Act means that the wider meaning must be adopted in the Act. This has been fully analysed in GTR's written submissions which I have referred to in my reasons below.
27. No sensible answer has been provided by the defence that rule 46.1 does not allow the prosecutor to do what has been done in this case and it is beyond argument that an employee of the prosecutor can commence the prosecution through rule 46.1.

28. Mr Ratliff discussed a secondary argument, that if a lay prosecutor laying an information amounts to a breach of the Act in conducting litigation when not authorised or exempt, it was not the intention of Parliament that such a breach would invalidate the proceedings. Proceedings. Separately, it was submitted that **Mazur** was not of application to the facts.
29. It was not conceded that the Category 2 and 3 charges were withdrawn and re-issued as suggested by the defence because it was found they had not been commenced properly. That followed the issue of use of lay prosecutors being brought to the attention of the train operating companies in June 2025 and was taken to ensure best practice was followed.

### **Prosecution Response to Issue 2**

30. Mr Ratliff accepted there has been a deviation of the Crim PR the form was not followed to the letter but argued there has been neither unfairness nor prejudice to the defendant. He argued these cases are procedurally formulaic. There has been compliance with the overriding objective of the Crim PR in that the draft summons sets out who the defendant is, the offence, conduct of the particulars alleged and the name and address of the person who laid the information and the name of the prosecutor. No prejudice has been identified by the defendant that the precise content of the form was not followed by a letter. The forms are designed to cater for all forms of offences. No part on the pro-forma which has been omitted has any bearing in cases of this nature. There is no basis to say Parliament intended that to happen. The case of **Kay** relied on by the defence, was about the prosecutor breaching its duty of candour, and is not authority for the proposition that compliance with prescribed forms is required. Deviation from the strict terms of the proforma is not applicable and is not an abuse.
31. In respect of the rights of audience, (i.e. a lay prosecutor appearing before the court), Mr Ratliff submitted it was beyond argument that the breach was not intended by Parliament to result in proceedings being a nullity and relied on the case of **Ndole Assets Ltd v Designer M&E Services Ltd [2018] EWCA Civ 2865** at [76-78]. It was the understanding of the train companies that non-qualified advocates would undertake litigation, the court was aware of this and gave permission and, as a result, invalidity does not follow from a breach of the provisions.

### **Prosecution's Response to Issue 3**



32. Finally, in relation to the abuse argument, Mr Ratliff argued the Category 1 cases do not amount to an abuse because there has not been any unfairness either in breaching the Crim PR nor in the used of lay prosecutors. Limb 2 is used because the integrity of the criminal justice system is at risk, but that high threshold has not been reached in this case. It requires a balancing of interests, the seriousness of the defendant's rights and the seriousness of the offences. There is no suggestion that the proceedings which happened in the defendant's absence were not fair.
33. A two-stage approach is required. The defendant must establish the wrongdoing. A criminal offence under the Act is committed if the person knew they were committing one and if not, that is an honest mistake. The court cannot say that the lay prosecutor knew they should not be conducting the hearings. There is no basis for such a finding to be made but that the opposite is true that this was an industry wide practice which has been going on for a very long time.
34. The proceedings were properly instituted, and no sensible argument has been advanced to show they were not. There is no suggestion as to how this defendant has been prejudiced. If he pleaded guilty or was found guilty in absence, he has a remedy to apply to re-open the cases and not to stay the proceedings. The defendant accepts he has failed to pay the fare when the proceedings were brought against him.
35. In response Ms Curzon addressed the court about Crim PR r46.1(2) submitting that laying an information is different to an application for a summons because conducting litigation starts before a summons is made and it was not Parliament's intention that key proceedings should be commenced by those not entitled to do so and by undertaking of audience.
36. Mr Ratliff responded that this had been addressed in their Skeleton Argument, that section 112(1) of the Act is an interpretation provision for Chapter 1 of which section 30 is a part, and states that "written charge" has the same meaning as in section 29 (namely a document which charges the person with a defence) and also includes "an information" which puts this in Crim PR r46 territory.

## **REASONS AND DECISION**

37. I will take the issues in the order raised by the defence.

## The Conduct of Litigation

38. The defence made submissions in the same terms for the commencement of the proceedings by the laying of an information and secondly the conduct of litigation/rights of audience – that lay prosecutors do not have the right to conduct litigation and have rights of audience because these are reserved legal activities pursuant to section 12 and Schedule 2 of the Act. Only an authorised person or those who are exempt can undertake a reserved legal activity; under section 13 of the Act. Mazur is relied on to support this submission because a reserved legal activity cannot be conducted by an employee and that “mere employment by a firm authorised to conduct litigation is not sufficient for the employee to conduct litigation themselves, even under supervision”.
39. The prosecution argue that **Mazur** is of no relevance because the laying of an information was made by an employee of GTR who is an exempt person in relation to a reserved legal activity pursuant to section 19 and Schedule 3. Schedule 3 contains categories of exempt persons. The defence argument is based on a person not being an authorised person in relation to the activity but under (b)(ii) a non-authorised person has the right to conduct litigation in relation to the proceedings granted or under an enactment, Schedule 3 para 2(2) and para 2(3). In this case the exemption has been made by an enactment, with Crim PR rule 46 providing an exemption to the 2007 Act.
40. I have set out in detail the prosecution written submissions on this point as its case is that there has been a legislative basis for the prosecutor to lay an information before a Magistrates Court, relying on the Magistrates’ Courts Rules 1981 and thereafter the Crim PR from 2005 to 2020. A number of examples are given about legislative authorisation and exemptions for non-regulated professionals to conduct litigation or the exercise of rights of audience – such as Home Office Presenting Officers who derive their rights of audience from section 84 of the Immigration and Asylum Act 1999 for the purposes of the 2007 Act. Similarly, section 223 of the Local Government Act 1972 allows a member of a local authority authorised by them to prosecute or defend the local authority in proceedings in the Magistrates’ Court.
41. The Crim PR are made by the Criminal Procedure Rules Committee which derives its power from section 69 of the Courts Act 2003 which is supplemented by various provisions

including the Criminal Justice Act 2003 section 30. The interpretation provision for Chapter 1 of which section 30 is a part is section 112(1) which states that “written charge” has the same meaning as section 29 and also includes “an information”.

42. Therefore at the time the summonses were issued for the Category 1 cases Crim PR r46.1(1) provided at (2) that “A member, officer or employee of a prosecutor may, on the prosecutor’s behalf – (a) a serve on the magistrates’ court officer, or present to a magistrates’ court, an application for a summons or warrant under section on 1 of the Magistrates’ Courts Act 1980; or (b) issue a written charge and requisition, or single justice procedure notice, under section 29 of the Criminal Justice Act 2003”.

43. The argument continues that Crim PR 46 is an enactment for the purposes of the 2007 Act. An enactment can but does not always include subordinate legislation. Enactment can be used to describe a provision of a statutory instrument. Although the 2007 Act does not define “enactment”, the interpretation of terms is found at section 207(6) and provides that “enactment” means a provision of “an Act of Parliament”. The submission made is that for the purposes of section 207 “enactment” is used in respect of the definition of a “not for profit body” and because the meaning in section 207 is limited the wider meaning is to be adopted where the term is used elsewhere in the Act and therefore in schedule 3 enactment includes subordinate legislation. The prosecution relies on the case of **Buttercup Buildings v Avon Estates London Ltd [2020] UKUT 347 (LC)** where the Upper Tribunal Property Chamber had to consider whether procedural rules allowed a party to proceedings before the 1st tier tribunal to be represented by somebody who was not authorised pursuant to section 18 Legal Services Act 2007. Rules were made under section 22 of the Tribunal Courts and Enforcement Act 2007 wherein rule 14 allowed for a representative appointed by them, even if they were not legally qualified, to represent them in proceedings and to do anything required to be done by a party. The Upper Tribunal found at [32] that “.....permitting a party to appoint a representative (whether legally qualified or not) is a matter of practice and procedure falling within section 22 and it is therefore a matter on which the Tribunal Procedure Committee is competent to make Tribunal Procedure Rules”.

44. The prosecution accepts the defence argument relying on **Mazur** is correct, but it does not deal with the argument raised and the analysis provided by them, as I have set out above, that the commencement of the proceedings is not precluded by the 2007 Act because the employees of GTR are exempt persons. This was neither challenged nor argued against by

the defence and I agree with the full analysis provided and argued by GTR that the activities of non-legally qualified professionals is authorised by not only the current Crim PR but also since 2005 which have been used as part of an enactment derived from section 69 of the Courts Act 2003 and supplemented by Criminal Justice Act 2003 section 30. This is based on a broad definition of enactment. Therefore, I agree that a lay prosecutor can commence proceedings. They are exempt persons and **Mazur** has no relevance in this case.

45. Furthermore, the secondary argument raised by GTR also succeeds in that even if there had been a breach of the 2007 Act in the commencement of the proceedings, the consequences of the breach where a lay prosecutor started proceedings, in reliance upon rule 46 would not necessarily be invalidity.

46. Even if I had not found that the employees are exempt persons, I do not agree that the laying of the information for an application for a summons is itself a criminal act under section 14 of the 2007 Act because a defence is set out at subsection 2, wherein it is not an offence if the person applying for a summons did not know and could not reasonably have been expected to know that an offence was being committed. Given that there has been an industry wide use of non-authorised employees to lay informations which has been a long-standing process an individual who carried out a reserved legal activity would have a defence. Again, I agree with the prosecution on this point.

47. In respect of the conduct of litigation/rights of audience the prosecution also submitted that a breach of the requirements of the 2007 Act was not intended by Parliament to result in a nullity. Again, this was not challenged in the terms put by the prosecutor who relied on the Court of Appeal case of **Ndole Assests Ltd** to further the submission. In that case a claim form in civil proceedings was served by someone who was not an authorised person to conduct litigation. LJ Davis held at [76-78] that the court's attention had not been drawn to any statutory provision in the 2007 Act *"stipulating the consequence (in terms of validity) for an act of conduct of litigation being performed by a person neither authorised nor exempted by that statute"* and stated, *"in my view, nullity is not to be taken as the statutorily intended consequence..."*.

48. Following this authority, I agree with the prosecution's analysis that it was not Parliament's intention and I agree that it was GTR's understanding that those individuals addressing the court were permitted to do so because of the long-standing practice in the Magistrates'

Court allowing them to conduct advocacy. The court has been aware of this arrangement for many years, and I agree it is arguable that in these circumstances the court has granted rights of audience which would fall into the Schedule 3 exemptions. Here, the conduct of rights of audience has been available after years of appearing in the Magistrates' Court without a formal application being made every time and it appears to me that the court has granted rights of audience through practice and convention.

### **Non-Compliance with the Criminal Procedure Rules**

49. Secondly, non-compliance with the Crim PR and Crim PD is argued on the basis that the use of a prescribed form is mandatory. Rule 7.2 provides what must be contained in an application for a summons, which must be:
- (a) made in writing;
  - (b) identify the proposed defendant;
  - (c) specify the offence or offences alleged;
  - (d) contain such particulars of the conduct alleged to constitute the offence or offences as will enable the defendant to know what case they have to meet; and
  - (e) include any information required by the relevant practice direction.
50. It must also contain a statement by the prosecutor confirming the information is true to the best of their knowledge and belief.
51. I was told that in this case, as has been a longstanding practice, the prosecutor provided draft summonses to the court the substance of which contained all the information required for a summons to be issued. The court is the arbiter and would not issue a summons if it did not contain all the information necessary to do so including the name and address of the individual who laid the information and was signed on behalf of the prosecutor. Reliance was placed by the defence on **R (Kay)** which it said held that a Magistrates Court jurisdiction to issue a summons depended on the proper laying of an information which means that the correct forms and procedure requirements must be followed as a precondition to valid proceedings. I do not agree with this submission because the prosecution rightly points out that the ratio in that case was in relation to the duty of candour which a prosecutor has to comply with when applying for a summons [37-38].

52. The defence have also failed to provide any details of either prejudice or unfairness to the defendant.

### **Abuse of Process**

53. Finally, abuse of process. The defence argues that the court has power to stay proceedings because the case falls foul of the second limb, in that a stay is necessary to protect the integrity of the criminal justice system. The wrongdoing and misconduct are based on conducting litigation and a trial which led to the defendant being convicted when the prosecution had been conducted illegally and a criminal offence has been committed by the prosecutor.
54. GTR have set out the authorities it relies on in its Skeleton Argument and the questions the court must answer to find an abuse. I will go through them. A balancing exercise is required. In this case the defendant has been charged with a number of offences of fare evasion. As submitted by the defence he admits his guilt. There is no suggestion that the proceedings which commenced in his absence were not fair. The defendant would have been sent all the relevant evidence with the summons. The court has inbuilt processes to ensure fairness. To proceed in absence the court would need to be sure that the defendant had been properly served with the evidence against him. A conviction can only be recorded if the court is satisfied that the defendant is guilty beyond reasonable doubt.
55. I do not agree that the defence has proved that the prosecution has been guilty of misconduct because although a criminal offence is committed under the 2007 Act this is only so if the person knew he was committing one; there is a defence of honest mistake. It has not been shown that the lay prosecutor knew they should not be conducting the hearings. I have been persuaded that there has been an industry wide and long-standing practice for lay prosecutors to conduct such hearings.
56. I have found that the prosecutions have not been illegally brought because the high threshold for such an argument to succeed has not been met.
57. It has not been submitted that the defendant has been prejudiced in any way. I have set out above the procedure the court would undertake to make sure the defendant had been properly served with all the papers before it heard a trial in absence.

58. Finally, the defence have not shown on the balance of probabilities there has been an abuse of this court's process pursuant to the second limb and this challenge fails.

## **CONCLUSION**

59. The defendant's application is dismissed for the reasons set out above.

District Judge (Magistrates' Court) Tempia.

15<sup>th</sup> January 2026.