



[2025] EWCA Crim 61

Chiara Sarti, Daniel Hall and Phoebe Plummer

- v -

The King

PRESS SUMMARY

This summary is provided for the benefit of the press and public. It does not form part of the judgment. References in square brackets are to numbered paragraphs of the judgment.

Introduction

1. The Court of Appeal (The Baroness Carr of Walton-on-the-Hill (Lady Chief Justice), Mr Justice Bryan and Mr Justice Chamberlain) today handed down judgment in these appeals. The judgment explains how s. 7 of the Public Order Act 2023 should be interpreted and applied in protest cases where the protesters' rights under Article 10 and 11 of the European Convention on Human Rights ("ECHR") are engaged. Section 7 creates a new offence of interfering with key national infrastructure.

Facts

2. On 15 November 2023, the appellants and 61 others participated in a slow march protest organised by Just Stop Oil on Earl's Court Road in West London. The slow march began at Earl's Court Underground station around 10.30 am and the protesters walked towards the junction with Cathcart Road, blocking the entire carriageway. The appellants were arrested between 10.56 am and 10.58 am. At 11.46 am, the protest came to an end with the arrest of the remaining protesters, at which point traffic started flowing again. These roads are designated as "A" roads.

Decision below

3. The appellants were tried at Southwark Crown Court for interfering with key national infrastructure by causing significant delay to the use of an "A" road. The judge (His Honour Judge Hehir) directed the jury that the fact that they were protesting was not capable of amounting to the defence of "reasonable excuse". This was because, once the elements of the offence were satisfied, a conviction would necessarily be a proportionate

interference with Articles 10 and 11 ECHR and because assessments of proportionality were for the judge and, on the facts, a conviction would be proportionate. The appellants were convicted on 15 May 2024.

4. On 24 September 2024, Ms Sarti and Mr Hall were sentenced to a 12-month community order with 100 hours of unpaid work. Ms Sarti was also sentenced to a 15-day rehabilitation requirement. Ms Plummer was sentenced to 27 months' imprisonment, comprising 24 months for a previous offence of criminal damage and three months for the s. 7 offence.

Arguments

5. The appellants argued that their convictions were disproportionate interferences with their rights to freedom of expression and assembly, protected by Articles 10 and 11 ECHR. They advanced two grounds of appeal:
 - (a) First, that the trial judge erred in concluding that the elements of the offence in s. 7 of the Public Order Act 2023 were sufficient in themselves to ensure the proportionality of a conviction.
 - (b) Secondly, if the judge did err in that respect, that the judge also erred in deciding the issue of proportionality himself and in deciding that the convictions were proportionate interferences with the appellants' Article 10 and 11 rights.

Decision of the Court of Appeal

6. The Court of Appeal noted:
 - (a) In s. 7, Parliament identified categories of national infrastructure which are essential to national life. Interferences with such infrastructure are particularly likely to have an adverse impact on the lives of other citizens: see [58].
 - (b) In line with this approach, the definition of "road transport infrastructure" in s. 8(2) identifies the roads where obstruction or delay is likely to have the greatest impact on the rights of the travelling public. The definition includes motorways and "A" and "B" roads. This is a minority of all roads: [59].
 - (c) Section 7(4) should be read together with s. 7(5). The former deals with the case where the use or operation of infrastructure is *prevented* (for example, by destroying any part of it or putting it beyond use). The latter deals with the case where the use or operation of the infrastructure is *delayed*. In most protest cases, acts of the protester will delay, rather than prevent, the use of the road. In such cases, only a "significant" delay will count: [60].
 - (d) The defence of "reasonable excuse" in s. 7(2)(a) is broad enough to allow consideration of the proportionality of any conviction. But the presence of the defence does not necessarily mean that such consideration is required: [62].

- (e) Those taking part in a protest notified in advance to the police under s. 11 of the Public Order Act 1986 would be entitled to rely on the defence, provided that they complied with any conditions imposed by the police under s. 12: [63].
7. The question was therefore whether the ECHR required courts to undertake an individualised assessment of the proportionality of a conviction in each case. The Supreme Court has considered a similar question in the context of the offence of wilfully obstructing the highway contrary to s. 137 of the Highways Act 1980. In that context, it had held that an individualised assessment was required: see *Director of Public Prosecutions v Ziegler* [2021] UKHL 23; [2022] AC 408.
 8. The Court of Appeal, however, considered that this reasoning should not be applied to the new offence under s. 7. It is materially narrower than the s. 137 offence. It applies to a narrower range of roads and so leave protesters with a wider variety of ways in which to make their point: [73].
 9. The new offence does not prevent protesters from protesting on public land which is not a highway, or at the side of the road. It also does not prevent them from protesting on the majority of highways. Even on the roads to which it applies, on its proper construction, the offence is likely to be committed only where the protesters' acts significantly delay the use of the road by others, and where the protesters intend this effect or are reckless as to whether it will ensue: [73].
 10. Moreover, the mechanism in ss. 11 and 12 of the POA 1986 is relevant. It provides a means by which those wishing to protest, even on A or B roads, can do so, whilst allowing the police to impose conditions capable of mitigating the disruptive effect on others. Those participating in a lawfully notified protest, in accordance with any conditions imposed on it, would have a defence [74].
 11. Taking all these matters into account, the Court of Appeal decided that, in setting the parameters of the new offence, Parliament had not exceeded the relatively broad margin of appreciation open to it. Accordingly, the court was not required to undertake an examination of the proportionality of the conviction in each individual case: [75].
 12. Accordingly, ground 1 failed and ground 2 did not arise for decision.
 13. The Court of Appeal therefore granted leave to appeal, but dismissed the appeals.

Important note for the press and the public: this summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment ([2025] EWCA Crim 61) is the only authoritative document. The judgment is a public document and is available online at Judgments Archive - Courts and Tribunals/Judiciary: <https://caselaw.nationalarchives.gov.uk/>

