

Appeal No: A20210046

A20210048

A20210066

A20210067

A20210068

IN THE CROWN COURT AT ST ALBANS

Bricket Road

St Albans, Hertfordshire, AL1 3JU

Date: 4 May 2022

Before :

HIS HONOUR JUDGE SIMON

CAROLINE FOX JP

RICHARD HERBERT JP

Between :

SALLY DAVIDSON

LIAM NORTON

LAURA FRANSEN

CHARLOTTE KIRIN

CASPAR HUGHES

Appellants

- and -

REGINA

Respondent

Mr R Chada (of Hodge Jones & Allen) for the 1st, 4th & 5th Appellants

Ms L O'Brien (of Hodge Jones & Allen) for the 2nd & 3rd Appellants

Mrs S McIntyre (instructed by the Crown Prosecution Service) for the Respondent

Hearing dates: 14, 15, 16, 18 March 2022 and 25 March 2022 (*bench deliberation*)

JUDGMENT

HIS HONOUR JUDGE SIMON:*Background*

1. At approximately 10pm on the night of Friday 4 September 2020 a group of protesters, numbering about 50, arrived at Great Eastern Road, Waltham Cross, Hertfordshire and took up various positions at a point directly opposite the entrance to the Newsprinters site, referred to as the Broxbourne site. Two vans were parked at an angle directly in front of the sole entry gates to the premises. Protesters were present on top of and underneath the vans, with pairs being secured to each other by lock-on devices intended to delay any removal. Two relatively flimsy bamboo structures were quickly erected behind the vans and protesters suspended themselves precariously, at a height. At the base of these structures and further back from the vans, a number of protesters had locked themselves into a specially constructed lock-on device intended to secure a number of people at different levels and angles.
2. Simultaneously with the protest in Broxbourne, a partner protest, as it was being termed during the appeal hearing before us, was taking place at a sister establishment of Newsprinters in Knowsley, Liverpool. There was brief mention of a third action at Newsprinters' Glasgow-based printworks, although this featured only to a limited extent at the hearing. It was referred to in the chronology document. All three actions were undertaken by groups of protesters acting under the umbrella banner of Extinction Rebellion (XR), although it became clear that beyond the central message of the group, relating to climate change, individual protesters had additional causes that motivated their actions.
3. This is a multi-appellant appeal arising out of convictions at two hearings before a District Judge at which each of the Appellants was convicted of the offence of wilful obstruction of the highway, contrary to section 137(1) Highways Act 1980. Due to the number of people arrested as a result of the incident, and the Covid restrictions previously in place, they were being tried in tranches of six at the Magistrates Court.

4. All twelve of those who appeared for trial and were convicted at hearings in May and June 2021 appealed to the Crown Court against their convictions. However, by the time the appeal was listed for hearing, seven had abandoned their appeals and we proceeded only in respect of the five remaining appellants.
5. Although the hearing before us proceeded as a hearing *de novo* there was concurrently an application by the appellants to stay the proceedings as an abuse of process. It was the parties' position, from which the Court did not demur, that the abuse argument should not be dealt with as a preliminary issue, but heard alongside the substantive appeals, because it required some of the same witnesses to give evidence. Although the appellants left open the possibility at the outset of the hearing of an abuse argument on both the first and second limbs of Maxwell, this crystallised into reliance only on the second limb.
6. For the purposes of the appeal the Court received:
 - A bundle of photographs taken during the incident;
 - A map of the area showing the proximity of the premises to the A10 dual-carriageway and its junction with the M25 motorway;
 - Copies of contemporaneous documents compiled by Gold Command and Silver Command;
 - A set of agreed facts;
 - An agreed chronology of events taken from various sources including statements of witnesses not called, emails and other disclosed documents;
 - Submissions in writing from Appellants and Respondent.

Witnesses

7. The first witness we heard from was Assistant Chief Constable Owen Weatherall, who became Gold Command on the evening, that is the senior

officer in charge of the police response to the protest. Following the arrival of the protesters, police who were first on the scene reported what they found onsite to Police Headquarters. The duty senior officer, Gena Telfer, who was not Public Order Public Safety (POPS) trained, tried to secure the assistance of POPS-accredited senior officers so that the recommended command structure for such incidents could be put in place. By the time ACC Weatherall had agreed to become involved, it was clear that other officers had either been uncontactable or unable to assist. ACC Weatherall, Gold-accredited since 2015, explained that the command structure involves Gold setting the strategic intent and ensuring resources are in place to deliver it. The next senior officer in the command structure, Silver, is responsible for tactical planning and engagement of the police with the nature of the event. Thereafter, one or more Bronze commanders takes charge of on the ground deployment, being able to see what is going on, talking with those at the scene and considering the options.

8. Once appointed ACC Weatherill realised that specialist resources would be needed, in particular due to the nature of the lock-on devices used by the protesters. There would be insufficient trained staff within Hertfordshire and it would be necessary to draw in resources from other forces. The Gold Commander compiles a decision log, especially in relation to non-pre-planned dynamic events. The log documents Gold's thinking, key decisions and the reasons for them. ACC Weatherall was appointed at 23.51 and stayed at home for the first hour or so as other command officers were needed and once he was confident that they were being found, he made his way to Hertfordshire Police Headquarters. In time, Silver Command was assumed by Superintendent Wells from Essex Police and two Bronze commanders were also allocated.
9. ACC Weatherall's strategic objectives, which were hierarchical, began with the proximity of the premises to the A10, as a feeder to the M25, with a main interchange very close by. This is why the primary objective was to ensure that these major roads did not become blocked. The second objective was to secure access/egress to the site. The third objective was to facilitate the

protest. The immediate impact on two 24-hour businesses (the second being a hotel close by) was clear, but so were the Human Rights considerations and the police were always willing to facilitate the protest as long as the first two objectives could also be achieved. Every protest is different but ACC Weatherall said he always started with an open mind. The objectives were then shared with Silver Command. ACC Weatherall rejected the suggestion that the A10 was relatively quiet, pointing out that a queue was building of vehicles trying to enter the premises. The strategic objectives set had to take account of the likely hours over which the protest might last and its potential impact on the M25, which is nearby.

10. Within the third objective of facilitating protest, ACC Weatherall acknowledged that moving from right in front of the gates would be sub-optimal to the protesters' desired outcome, but he considered that a middle ground could be found that would achieve all objectives. However the protesters were not willing to move to adjacent ground, which did not block the highway use by motor vehicles. He disagreed with the suggestion that the wording of the objectives left no option but to remove the protesters from the scene. ACC Weatherall had well in mind the rights of the protesters.

11. By about 0300 it was clear that things were not going to plan. Silver command updated Gold that he had given a final warning to disperse and was still trying to engage. This was the first time that Gold got a sense of a lack of desire by the protesters to move. There were discussions about the dress code to be adopted by police to be involved on the ground and the decision was made to adopt Code 2, being armoured kit but without helmets or shields. This was chosen to allow for a swift response if the atmosphere changed. ACC Weatherall accepted that his counterpart in Merseyside decided not to start removal because the time for the print run to be shipped out had passed. He responded that every situation is different and had to be decided upon on its individual merits. He could not comment on whether the Merseyside site had the same major trunk road consideration that existed at Broxbourne.

12. As to the decision to remove the protesters, this ultimately sat with Silver Command as he was managing the scene and in conversation with Bronze commanders. Asked to whom Gold reported, ACC Weatherall said that in this incident he was in command, no one else, and he did not report to anybody. Although the Chief Constable did come out to Headquarters he had neither command function nor role and Gold did not defer to him. ACC Weatherall said he could not be clearer that at no point was the Chief Constable part of the decision-making. As to the interest being taken by the Home Secretary, ACC Weatherall said he could only relay what he had been told and captured it in the log, because that is what ACC Telfer told him. Though aware of ongoing dialogue between the Home Secretary and the Chief Constable, Gold was not involved. Most of the contact between them was by message, which Gold did not see. He was aware that the Home Secretary was looking for updates and a desire to see the situation moved along and resolved. ACC Weatherall said that these sorts of enquiries are not unusual with an incident of this nature. He would have been surprised if there had not been political interest. Local elected officials consider it part of their role to understand what is going on and he was not particularly surprised, as politicians showing interest is fairly common. It was noted in the log as part of the information that was provided. Neither the political nor the Chief Constable's interest had any effect on his decisions, which were driven by the events in front of him. Political interest is peripheral.

13. ACC Weatherall acknowledged the importance and practical application of operational independence. The command function is not dictated by stakeholders, but based on intelligence and information. Being remote, that is at Headquarters and not onsite, emphasises the role of setting strategic intention, while allowing officers on the ground to make decisions as they are best placed to do so. ACC Weatherall explained, in relation to the Chief Constable's enquiry about whether the removal could be speeded up, that had originated with the Home Secretary, that he had given an immediate response in the negative, providing reasons. Part of managing politicians, he said, is sometimes telling them what they do not want to hear. The documented enquiry made with Silver Command was merely for the purposes

of reinforcing the answer already given. Not every single interaction found its way into the Gold log, but ACC Weatherall was clear that he had already answered the Chief Constable's enquiry in the negative.

14. The offer of assistance from the Metropolitan Police (MPS) first came to ACC Weatherall's attention because the premises were thought to be just on the border of the MPS' territory. They had been made aware which was how it may have come to be flagged. As a result the Chief Constable had received a call from Cressida Dick, Commissioner of the MPS, offering resources. Mutual assistance could be initiated by a control room inspector, not necessarily a very senior officer. On this occasion, the formal request for mutual assistance came from ACC Weatherall personally.
15. Asked about not recording the protesters' intended end-time or their intentions, ACC Weatherall said he had not been aware of them at the time. His focus in the early stages was getting up to speed, getting an accredited command structure in place and arranging resources. Although the chronology document was put to him in detail, ACC Weatherall rejected the suggestion that the strategic objectives had been set based solely on an early snapshot of information. He said that experience counts for much and the number of protesters and nature of it, even without precise details about the lock-on devices signalled that resolving the situation would take a long time.
16. The decision to remove and arrest protesters was a tactical decision made between Silver and Bronze Command because they had endeavoured to engage with protesters, who were not prepared to amend their approach. Facilitating lawful protest was always one of the objectives, but the other two had also been set and it was for Silver and Bronze Command to achieve the objectives. Although aware of the decision to clear the area, Gold Command was slightly removed from it. The conference call at 1000 on Saturday morning was informal and involved the Home Secretary, the Chief Constable, ACC Weatherall and the relevant senior officers involved from Merseyside.

17. Following the incident a peer review was undertaken by two officers from outside the Hertfordshire Constabulary, Chief Inspector Duvall and Superintendent Warner. ACC Weatherall was asked about various matters, including the Home Secretary's involvement at the time. He gave a not dissimilar account to those officers as he had given in court, in particular that her interest did not affect any of his decision-making. Notes of ACC Weatherall's interview, apparently made by one of the peer reviewers, were put to him in part. They had not been shown to him at the time or subsequently to confirm their accuracy and, in fact, he took issue with some of the wording that was not language he would use. Specifically he only ever referred to political interest, not political pressure, the latter being a description with which he would not agree. The wording in the review report seemed to be broader comment and not specifically about the incident.
18. Asked about the making of his statement in May 2021 and the absence of any mention in it of the Home Secretary, ACC Weatherall pointed out that he had exhibited the Gold Command Log which made very clear her interest in the incident.
19. Superintendent Edward Wells was the POPS-accredited Silver Command, drafted in from Essex Police as no suitable accredited Silver was available within Hertfordshire. He had been Silver Command before, possibly on a dozen occasions which were specifically POPS, which was not his major discipline, and into the hundreds of occasions in non-POPS incidents.
20. The key guidance as Silver Command is the strategic objectives set by Gold Command, which is usually a lot briefer with a spontaneous event than a planned one. When he arrived on scene, Supt Wells thought there were four Hertfordshire Police liaison officers already there. He explained that the Protest Release Team (PRT) has a particularly niche skill, which is in short supply outside of London and mutual aid from the Met is almost always needed. It is quite a resource intensive task, with three officers needed for the removal of each protester. Supt Wells explained the chronology of his becoming involved, together with a unit of officers with which he had just

finished a shift. He described the nature of the more complex lock-on devices which involved eight to ten people effectively in a circle stacked on top of each other. Those at the base of the tripods needed to be released before those suspended at height could be safely brought down.

21. Addressing the three objectives within Gold's strategy, Supt Wells noted that facilitating the protest, provided it did not interfere with the other two objectives, was the balancing act, managing disruption to a reasonable level and taking reasonable steps to achieve all three objectives. The main risk with the A10 was the large number of vehicles, queueing up the road to collect newspapers. At the time of his arrival, the queue already ran north along the A10 up to the roundabout and beyond. Though manageable at that time, as one lane remained open, the police needed to make sure that this did not cause an issue. This objective was largely met. Access and egress to Newsprinters was entirely blocked for all vehicles, although foot traffic could get past. As to facilitating the protest, it was clear to Supt Wells, from updates from officers on site and from police liaison, that the protesters were not willing to negotiate, whether moving the protest, reducing it or allowing vehicles of any type wither in or out. Had they been willing to negotiate, the balance of rights could have been achieved. This meant Supt Wells moving to decisions about arrest and what would flow from this.
22. The impact on the Newsprinters' site was one of the primary frustrations for members of the public in the form of workers within the building. Many had vehicles parked within the compound which could not exit the site. Employees at the end of their shift were unable to leave by car and deliveries could be achieved because vehicles collecting papers could not get in.
23. Supt Wells said he was satisfied that every reasonable effort had been made to negotiate a change in the arrangements adopted by the protesters, but without success. The Police Liaison Team had been at the scene for some time, reporting to Bronze Command (Chief Inspector Johnson), who reported to Silver. There was to be no voluntary change to the profile of the protest, which led to a need to make arrests in order to secure the balance of rights.

Supt Wells explained in detail the national decision model which was employed, noting that there were no powers available to achieve removal without arrest. The nature of the offences for which protesters were arrested was determined in consultation with the senior investigating officer.

24. Supt Wells made reference to the risk matrix set out in his log, which he explained. In the two versions of the matrix, there is a reference to politics/government, in terms of assessing the risk that the incident could have on confidence in policing, dependent on how they respond. There is policing by consent, and the police are accountable to government, be it local government, the relevant Police and Crime Commissioner or central government. Supt Wells noted that there is a lot of public comment around how the police deal with incidents. Although this consideration does not feature in every assessment matrix, more latterly it has done in protest situations. Aware of some interest from government that night, the consideration featured in the assessment. Supt Wells did not recall if Gold Command had told him specifically about the interest of the Home Secretary; some political interest would not be unusual; the scale of the incident or event would be relevant to the level of interest. It had not featured in previous POPS incidents in which he had been involved. A more pertinent concern expressed by Mr Brett, manufacturing director, was the number of staff who were onsite a long time and unable to leave with their vehicles. At some point taxis were ordered for some, with their needing to return the following day to collect their vehicles.

25. As Silver Command, it was Supt Wells' decision to remove the protesters, which was prefaced with a final warning that arrest and removal would follow if they did not remove themselves. There would have been conversations with Gold Command to keep him updated on progress. It is a very technical skill involved in removing people safely from such lock-on devices, with three or four officers per protester during the process. Asked if there was pressure from those above him to get on with removal, Supt Wells said there was no more than he would expect from an incident of this nature. There was no pressure from Gold Command, although approved professional practice

permits of challenge and testing from Gold to Silver. When Gold Command enquired about speed of removal it was in no way a frustrated enquiry, intending that action should be hurried up. Gold's input had been very constructive. It would not have been possible in any event as it would have taken considerable time to get additional resources to the scene and the best team in the UK was already onsite. In Supt Wells' view the balance of rights was struck within the objectives set by Gold Command.

26. Supt Wells did not recall if there had been a conversation about imposing conditions under s14 Public Order Act, though consideration of this would have been normal. Conditions can be imposed as to location and duration. However, by the time he arrived, which was a number of hours into the protest, it was clear that conditions would not make any difference to the actions of the protesters – neither in respect of location nor end-time. If negotiation could have happened, he would have tried to have one lane opened, allowing the protest to continue on the second lane and the adjacent bank. When challenged that objectives required removal of the protesters, Supt Wells pointed out that there was a need to allow access to and egress from Newsprinters. The protesters being removed by police was not the only way in which that could be achieved; they could have moved through negotiations. XR protests are high profile and in this incident there would be a clear knock-on effect to a significant proportion of the country. The impact of the protest was taking away the rights of others to go about their business beyond what was reasonable, in Supt Wells' view. National attention to the cause had already been achieved and allowing the protest to continue would have been disproportionate. He described himself as “a bit surprised” that there had been an out-of-hours call from the Home Secretary to the Chief Constable, but emphasised that with or without somebody of the level of the Home Secretary being in contact, his actions would not have been any different.

27. Inspector Barton was the first of his rank on the scene, following a number of reports about a protest/disruption at Newsprinters. He arrived at about 10.30pm and set to identifying stakeholders, establishing lines of

communication with the protesters and the site management, ensuring suitable resources came on scene and briefing upwards within the command structure. He described the arrangement of protesters at the scene, noting that the positioning of the two vans and the structures in use gave an appearance of being well organised and coordinated with the intention of stopping vehicular access along the stretch of road into Newsprinters. The lock-on devices and placement of protesters, which included on top of and underneath the two vans, meant that in essence the protesters would not easily be moved. While at the scene, Insp Barton was approached by a man who gave his name as Paul Stephens and announced himself as a liaison person on behalf of XR. A number of conversations took place, which included information about the aims of the protest. Some body-worn video footage was played of a conversation, in which the protesters were invited to hold a peaceful protest on the grass verge to the side of the road. The intention was to facilitate the protest, but just not on the carriageway, especially so that staff who had been working all day could go home.

28. It was known that a significant issue would arise at 3am when many staff would need to leave. It was the impact on individuals, rather than from the corporate perspective when Insp Barton was liaising. Mr Stephenson's response was that there would be movement of protesters and whilst he suggested there might be negotiation about the time, it was not actually particularly flexible, there only being mention of 10am instead of 11am. This was not really a compromise that addressed the crux of the issue, which was the presence of the protesters on the highway. Insp Barton said that the balance in his mind was to give an early opportunity for the protest to continue legally, balancing their rights with the national impact of the blockade as well as, on a more individual level, the hundreds of workers finishing twelve-hour shifts. The national impact was discovered from an initial task, which was to speak to a representative of Newsprinters, who was Mr Brett. The business prints numerous national newspapers and the continued blockade would have a severe impact on operations, meaning millions of pounds in lost revenue and an effect on some 30,000 retailers. The College of Policing five-stage appeal process for resolving conflict was employed. The protesters were

aware that they would be removed and, to the best of Insp Barton's knowledge that they would be arrested.

29. Asked about travel arrangements in the local area, Insp Barton thought the site would usually have been accessible by public transport. He could not recall bus stops in the vicinity, but there is a train station. Though he did not believe that access by foot was impeded, the crux was vehicular access. His understanding was that the target was Newsprinters and that the location was relevant to the protest. He had suggested moving to the grass verge next off the road. The protesters' intentions were relevant considerations that informed policing decisions. Insp Barton could not recall being aware of any interest from central government and certainly not involvement of the Chief Constable.

30. PC Joshua Wilson was the first liaison officer on scene and moved around talking to people in the different groups. He was trying to gain a full oversight of views to relay back to commanding officers. He described the scene and the various groupings of protesters. He had not seen the particular lock-on devices being used on this occasion and they presented a particular challenge. He estimated there were about fifty protesters in the road with additional thirty or so supporting them and not engaged in active protest. PS Wilson was asked to speak to the protesters and get them to move and then brief the command team about the structures in place. PC Wilson also referred to the College of Policing five-stage appeal. Some were relatively polite in response, others were not so polite, but on the whole the atmosphere was amicable. They were fully aware that they would be arrested, but they did not seem to care, given their view of the cause for which they were protesting.

31. PC Wilson became one of a team of four liaison officers tasked with communicating with the protesters. When challenged about whether he spoke to every one of the protesters, PC Wilson described the area within which the protesters were located as similar to the size of the courtroom and that he spoke to all locked-on protesters, including those under the vans

(making reference to a specific request about toileting which could only have come from such a conversation). He did not recall people walking around, as suggested, and such a person would have been taken to the side, away from the cordon around the protesters. He did not have a note of to whom he spoke, because there were fifty people present refusing to give their details or have their pictures taken. The supporters on the side included people with megaphones and they were updating the protesters and trying to motivate them.

32. John Barker is the managing director of Newsprinters, which has three manufacturing sites, the one in Broxbourne, and two more in Liverpool and Glasgow. He described the scale of the operation and the various ways in which newspapers and magazines printed in Broxbourne are distributed to wholesalers, retailers and individual homes. The total number of vehicles collecting print from Broxbourne for distribution is between 250 and 370 on any given night. There would be about 120-130 members of staff on site. On this occasion there would have been possibly 30-45 distribution drivers already within the site before the protest began. The impact of the blockade was some 2.5 million papers, already printed, going to waste, with sales revenue loss to publishers.

33. It was a very stressful night for staff, many of whom commute by car and were unable to get their cars out of the site car park. Quite a number of staff commute from the south coast (due to the former location of the printworks in Wapping); the majority of staff members come to work by car. Some staff did leave by taxi because of family commitments, but the majority had to stay as it was the weekend and they needed their cars. Some slept at the site, due to being back on shift the following day. The earliest that staff were able to leave in their cars was between 11am and 12 noon.

34. Mr Barker described the logistical and financial impact of the protest on the business. With no vehicular access to Broxbourne or Knowsley, distribution of already printed papers could not proceed. Attempts were made to arrange for printing at alternative businesses, but this also involved sourcing new

delivery methods. He explained the impact on delivery of newspapers to retailers and homes. Between the two sites some 2.5 million printed papers went straight to waste. Some newspapers would have lost advertising revenue in the hundreds of thousands of pounds. Although Mr Barker had spoken to three executives from News UK, the owner of Newsprinters, he was unaware of any conversations that might have been had with anyone in government. The financial loss to News UK was in the region of over £1m, not including goodwill payments and added security for a few nights following the protest.

35. Alan Brett is the manufacturing director of Newsprinters, who returned to the site after a call from the facilities manager. He returned due to his responsibility for staff and their welfare, as well as to try to get the product to the customers. As managing director he looks after all operational logistics (relating to staff and products) across the three sites (Broxbourne, Knowsley and Glasgow). On arrival by taxi, Mr Brett entered on foot and tried to reassure the staff that they were safe, although the site was blockaded. Those who had arrived on shift at around 7pm or 8pm, would normally have expected to go home about 4.30am. The majority of staff either left by taxi or later than normal; some needed their cars for the next day so had to stay. The company tried to organise hotels but there was not a lot of availability. The nearest train station is Waltham Cross and as for buses, none travel across the A10.

36. The mood of staff was frustrated as they could not get home and they were concerned of the impact on their jobs. Mr Brett and others were doing their best to calm frustrations throughout the evening. Some frustration manifested itself in anger and upset and this was in the context of an ongoing redundancy programme at the time. Many staff who had to return to work later on during Saturday 5 September 2020 needed rest and were told to come in later. There were more than one hundred staff onsite and all were affected in some way. About a dozen slept in their cars, waiting for the site to be cleared. Although Mr Brett was unaware of any financial loss to staff, the impact was more in terms of family arrangements being affected. Asked about the timing

of printing at Broxbourne, Mr Brett said that the print run begins between 8.30pm to 9.30pm, concluding at around 3am. There did come a point, a tipping point, after which whatever had been printed would be redundant and this was around 2am – 3am.

37. We heard from each of the appellants in turn. The nature of the issues in the case which we have to determine is such that it a shorter resume of their oral evidence suffices within this judgment.

38. Caspar Hughes is 50 years of age and attended the protest from the start at 10pm. He said he was acting a liaison between police and protesters, a role he fell into rather pre-ordained, until around 4am when he found Ms Fransden to lock-on with in the front of one of the vans. This was until he was arrested at 6.15am. He said that he was not asked to leave by police, though this was clearly what the police wanted, and the only warnings were from the PRT officers who cut him out of the device. The objective of the protest was to pause the distribution of papers owned by Rupert Murdoch for one cycle. Mr Hughes explained the gulf, as he described it, between the public understanding of the current ecological crisis compared with their understanding of the scientific consensus, something which is maintained by the media. He elaborated on the power of the press, specifically the Murdoch press. The protest on 4 September 2020 did increase awareness of the power of the press, it being some nine days before reporting on it stopped. Had the protest moved to the side of the highway, allowing distribution, this level of reporting would not have been achieved. Mr Hughes said the impact on the staff had been considered in advance, although it made him uncomfortable listening to the evidence of Mr Brett. Train timetables had been considered and it was believed working patterns would be met through use of public transport. It was also expected that Newsprinters would provide cabs and care for its staff. The intention was to stand down at 11am, having disrupted one news cycle and the remaining protesters at that time kept to their word.

39. When cross-examined, Mr Hughes accepted that he had no knowledge of where staff lived and how they would get home, although he knew there was a large car park and had, what he termed, an idea of some likely outcomes. He referred more than once to his general knowledge and experience which he applied to the likely shift patterns at the site, the conditions under which delivery drivers operate and their usual pattern of work. He acknowledged that the police were careful about not causing the bamboo structures to come down dangerously and that they and the lock-ons were intended to ensure the protesters would be there for a long time. Mr Hughes went on to say that he had considered that the effect of the press on the public was phenomenal when compared with the impact on staff of the protest. He did accept that the protest could have stopped earlier, but the protesters did not know at the time that the desired effect had been achieved by the early hours of Saturday morning. The gulf between when the police wanted the protest to stop and when the protesters were prepared to do so was beyond negotiation. He also confirmed that he was aware of the 'partner action' at the printworks in Knowsley.

40. Charlotte Kirin is 53 years of age and described her extensive work record as a social worker as well as her voluntary work. She had heard of the proposed protest through XR contacts and considered it was well focussed and targeted, therefore something she wanted to be part of. She arrived at around 10pm, waited for one of the vans to come in and, very soon after, unloaded a lock-on device and placed herself under one of the vans. Her arm was in a plastic and concrete tube with the lock-on as part of the tube and connected to another protester on the other end. She said she stayed there until arrested and was not approached and asked to leave by police prior to arrest, although it was obvious the police wanted the protesters to move. It was possible, however, that the police did not know she was there as the side of the van was covered by a banner and she was well underneath it. The purpose of the action was to pause newspapers from Broxbourne for one cycle, using the lock-ons to make it difficult to move protesters. She was aware the agreed time to stand down was 11am. She too spoke of the inordinate amount of power of the Murdoch-owned press and its impact on

ecological and social justice. It was a symbolic gesture, a few hours in interruption of an industry having its say every day for years and the action felt proportionate to her.

41. Ms Kirin spoke of the impact of the climate crisis on those close to her and with whom she works, as well as the wider global impact. She did not believe that the press serves the vast majority of the population because it does not tell them what they need to know or the truth about systems that are threatening their futures. She also specified the Murdoch titles as the specific target of the action, with non-Murdoch titles also being criticised. As to the staff, she realised that the protest might mean people would not be able to leave at the end of their shift, but the protest was time-limited and this was communicated. She really hope that the employer would carry out their duty of care and was pleased to hear that this was the case.

42. Asked about having no intention of moving until moved by the police, Ms Kirin said she was aware she might be cut out of the lock-on, which is what happened, and she was fully aware that she could be arrested. Due to the damage caused by the Murdoch press, it was necessary to create a barrier at the gate and she was unsure that this could have been achieved, whilst letting cars out of the site. It was vehicles that were trapped, not people, she said. Public transport could have been used and she repeated her hope at the time about fulfilment of the employer's duty of care. Ms Kirin said she had thought about the effect on everyone but she acted because of her belief in the importance of the climate crisis and societal breakdown. Asked about the balancing of the rights of the innocent workers at the site, she referred to their facing flooding, drought and food shortages in the next few years.

43. Laura Frandsen is 32 years of age and from Denmark, but at the time of the protest had recently finished a Master of Arts degree and was living in London. She described how she became increasingly aware of the pace of the climate change emergency and what she described as the lack of any proper action from government. She referred to the best available science suggesting just two years to take sufficient action to mitigate the crisis and

that her actions as a result were not for self-benefit but motivated by her care for millions of innocent people already affected and the billions more to be affected within the next few decades. On 4 September 2020, she too arrived at 10pm with everyone else, was roaming around talking to other protesters, checking on their wellbeing, until she locked-on with Mr Hughes at around 4am. She had been to enough protests to know that she risked arrest, which on balance became a small sacrifice compared with the risk of not doing anything. She referred to the power of public opinion wielded by the media and the need for the media to tell the truth about the climate crisis. She too described the single-night disruption of printing as a symbolic act. She said that she always had consideration for people affected by such protests. It would have been fairly easy for the protesters to stand down at 11am as they had planned. The mood was peaceful with no intimidation on either side.

44. Asked further questions, Ms Frandsen said she was not acting as liaison, her role being 'wellbeing'. No police officer ever spoke to her directly. She agreed that personally she had no inside knowledge about the workings of Newsprinters and the distribution from there of newspapers. It was suggested that she acted on assumptions rather than knowledge of the effect of the protest on others, which she deflected by saying she relied on those who designed the action. As to whether it was a nice thing for people to have stay in the building, she said she did not think that people were kept in the building (referring to pedestrian movement). To questions about why some workers had chosen to stay and whether her views were more important than the rights of those people, she referred to how the workers would be more affected by the climate crisis than just not getting home on one night.

45. Liam Norton is 37 years of age. He recalled seeing a public letter from academics and religious leaders stating it was morally legitimate to get arrested to resist government inaction on climate change. A week later in November 2018, he went to his first experience of XR and then got involved in early 2019. He spoke of his "incredible anger" that the government was not performing its primary duty of protecting its citizens as well as the utmost urgency and importance that should be applied to the crisis. For him,

corporate corruption dictates government policy, and ultimately power, that is not in the interests of majority of people in this country and especially in poorer nations. On the protest itself, Mr Norton said he was brought in at the last minute and looked at the site online, which gave him a vague understanding of the layout. He arrived at 10pm, and with the ladder he knew was in one of the vans, he was to get on top of a van and stay there until 11am the next day.

46. From his perspective it was not just about the climate crisis, but also the media's role in stigmatising people in countries that are less privileged. The establishment-connected Telegraph and Murdoch-owned titles were an important target for him, he said, referring to his motivation having grown up with the Sun's reporting of the Hillsborough disaster – just one of hundreds of stories printed that vilified ordinary people. Although it was an important point that workers at the site would be incredibly annoyed not being able to get home, it was all about proportionality, which meant one night's disruption compared to the certain disruption for all people in danger from the crisis – he added that it was “even an act of love to do these actions”, even though it does not feel like it at the time. He said 11am was chosen to end the protest because they could be pretty sure that by that time newspapers would not be able to be distributed. Mr Norton had one conversation with a police officer but did not involve a warning to leave.

47. Asked about the workers' rights to go home, Mr Norton responded, “We have a right to life”. He said there had been discussions about the impact on staff, but he felt personally a business worth many millions of pounds would get staff home if it chose to. He insisted the action was proportionate. He was aware of a strong possibility he would be arrested. Mr Norton described “a lot of anger and hostility coming from the workforce” and, though there were XR people walking around trying to deescalate, this was not particularly fruitful.

48. Sally Davidson is 34 years of age, who at the time of the hearing had just gone back to work as a teacher. She had also made multiple trips to France and Greece to volunteer in refugee camps. She joined XR in 2018-19 to

highlight climate change, that was not largely known about at the time, and to try to bring real pressure on the government. On 4 September 2020, she arrived at 10pm with Mr Hughes and Mr Norton in one of the vehicles. She spent the entire protest on top of a van until the agreed stand-down time of 11am, which she later referred to as the time agreed between the sites (a reference to the partner protest at Knowsley) and the time that the protesters considered was proportionate.

49. She explained that one of the key messages of the protest was that refugees are welcome in the UK. She was very surprised at how little the police engaged with her. Once the PRT arrived it was obvious that the police did not want the protesters remaining there. She said the police could have facilitated a peaceful protest and there was no reason not to trust the protesters stated end-time of 11am. The protest was designed symbolically she said to target News Corporation as it is representative of the lack of a free press in the country and the press that is available promotes hate speech and climate denial. To be effective it had to be disruptive and it would not have been effective if at the side of the road.

50. She referred to her moral responsibility to protest in this way, being as peaceful and respectful as possible. The action was not taken lightly but was to disrupt the nation through the media, to be a spectacle. She referred to the workers ability to walk freely from the building and the announced end-time meant that people could have made a reasonable choice of whether to stay or go. She acknowledged that those in the building seemed not to have known about the end-time. She added that the action had tremendous support from those who were not present but know that that press is corrupted. Due to the national reporting of the action anyone who has suffered racism would have felt solidarity and they should be taken into consideration.

51. In answer to questions from the prosecution, Ms Davidson stated that, although she had not personally given prior consideration to those who would be impacted by the action, she trusted the organisers (with her life, she said) to do what is fair and reasonable. She acknowledged that there had been

some disruption, preferring this to a description of significant disruption, but repeated that this could have been mitigated by the police informing those in the site about the end-time. Asked about some workers who clearly expressed their upset at the action, Ms Davidson said she remembered a couple of them sharing their frustration, but as they were already on zero-hours contracts they were already experiencing job-insecurity, so the protest was only part of the reason for their reaction.

Submissions – Abuse of process

52. Having made reference to key principles from the case law, Mr Chada submitted that the Home Secretary and the Chief Constable undermined the policing operation of the protest, specifically a political protest. In his skeleton he had set out the principle of operational independence and he argued that the Home Secretary and the Chief Constable compromised the defined command structure for POPS incidents. He made reference to the agreed chronology and that decisions were not based on what was happening on the ground, but rather outside the command structure – a subversion of the command structure by a politician.

53. His second point was about the volume of contact from the Home Secretary and its timing, which he argued was unusual in itself, but that it demonstrated a theme, which was that the Home Secretary wanted the protesters removed as quickly as possible. The reason why politicians should not be involved is to avoid questions about whether there was pressure on the police that causes them to act in a different way. He said this was why ACC Weatherall was downplaying how unusual such political interest was; Mr Chada commended the characterisation of it as not normal, as set out in the peer review. The clear way in which the police response was affected by political pressure was in the setting of the objectives, which do not provide for a true balancing exercise. Mr Chada inferred that the objectives were ultimately based on information that had come, in significant measure, indirectly from the Home Secretary. Such information was therefore flawed as a starting point for setting policing objectives.

54. Mr Chada referred to Supt Wells' risk matrix, which was taking into account the confidence of politicians in policing, which was not an objective approach. Moreover, having it as high risk helped to inform the implementation and review of the policing strategy on the night. Therefore, both the objectives and the strategy to meet them were wrongly set, he argued. Mr Chada referred to the entry at 04.45 in the chronology as the clearest example of the police altering their behaviour at the request of the Home Secretary. Although he accepted that ACC Weatherall said in oral evidence he had come to a judgment that there was no additional capacity to speed up the removal process, this was not evidenced in the documentation that this was the thought process. Mr Chada said, describing it as his inference of the evidence, that ACC Weatherall made the enquiry following a conversation with the Chief Constable, due to further contact from the Home Secretary. This evidenced an influence on the Gold Commander and was an example of Gold being intrusive in relation to Silver Command. All of this amounts to executive misconduct that is so great, that it justifies a finding of abuse of process. The appellants argue that the Home Secretary was directing the police as to what to do, asking them to speed up removal and undermining the integrity of operational independence. By extension, the trial itself is an affront to justice, in support of which contention Mr Chada drew on *R v Grant* [2005] EWCA Crim 1089.

55. In response Mrs McIntyre sought to distinguish on their facts the case law relied on by Mr Chada. She also submitted that the executive behaviour in this case was not at all as great as the appellants alleged. She reminded us that the first duty of the Home Office is overseeing law and order. The principle of operational independence is not in question and the evidence in this case, she said, was that it was not unusual for the Home Secretary to want updates during such an incident and that the police are used to managing this. She said there was no evidence that the interest of the Home Office made any impact on the situation. The issue about mutual aid in the early stages of the night arose because the Metropolitan Police Commissioner thought initially that the protest was within her jurisdiction and when it was realised that it was not, she offered resources to assist. It was ACC

Weatherall who formally requested mutual aid and the Metropolitan Police have the best resources, especially in terms of PRTs.

56. Mrs McIntyre said that XR had targeted sites across the country, such that interest from the Home Office could hardly be seen as an abuse of power. Whilst ACC Weatherall may have been told about the Home Secretary's interest, there was no direct contact until the conference call at 10am on 5 September 2020. In any event, his decisions were not affected and he made clear he had been in control. There was, Mrs McIntyre submitted, no pressure on ACC Weatherall and his email was switched off so he would not have been aware at the time of much that was now in the chronology. Given the scale of the protest, it was legitimate for the Home Secretary to be kept informed of progress. The inclusion of politics in Silver Command's risk matrix derived from the national impact of a high-profile protest group's activity, but rights of the protesters and those affected were weighed up, but the balance was in favour of removal and arrest, given the level of impact.

Submissions – substantive appeal

57. Mrs McIntyre addressed the issues on the substantive appeal, by reference to the approach that the Court must adopt following the decision in Ziegler. Whilst a more than de minimis impact of the protest on other users of the highway was capable of being reasonable and therefore not unlawful, the fair balance when struck in the specific circumstances of this case resulted legitimately in the removal and arrest of the protesters. Again, the prosecution acknowledged that the protesters believed in the views they were expressing, although Mrs McIntyre reminded the Court that this and the nature of the cause itself could not be a factor that trumps all others, for the reasons identified in Ziegler. She also made the point that the nature and circumstances of the protest with which we are concerned was "in a different league" to those in Ziegler.

58. Additionally, Mrs McIntyre suggested that, through cross-examination of the appellants, it had been revealed that there had been insufficient thought given, in the planning stages, to those who would be impacted by the protest.

The evidence of Messrs Barker and Brett made clear the affect on the workers on site, many of whom needed their cars in order to travel home and for some their family lives were adversely affected, given that this was the beginning of the weekend. Mrs McIntyre said the protest also affected those further down the supply chain who all lost money. She submitted that the police made every reasonable effort to negotiate with the protesters but the latter were not willing to be flexible and move in any way that would allow even cars to exit.

59. Ms O'Brien described the exercise of the qualified rights under Articles 10 and 11 as essential to a functioning society. Whether or not any interference with those rights is proportionate is a fact-specific enquiry, as it was for the police on the night and as it is separately for this Court in respect of conviction. She made particular reference to the case of *Kudrevičius v Lithuania* at paragraphs 66-67 of Ziegler and the very disruptive nature of that protest, which she submitted was nonetheless considered to have been proportionate (we pause to note that, as is clear from the extract of the relevant paragraphs below, the convictions in *Kudrevičius* were actually upheld as a proportionate interference, given the very serious nature of the disruption caused. The relevance of the case to the Supreme Court's judgment is set out therein). Ms O'Brien also reminded us that this was a peaceful protest, an important aspect to consider, as was a degree of autonomy given to protesters, on the authorities, in the time, place and modality of protest. In this case, the protest was deliberately obstructive though with little if any impact on pedestrian traffic.

60. In addition, the protest was about very important issues, Ms O'Brien submitted, making the location and timing highly relevant. She repeated Mr Chada's earlier submissions about the police undertaking a flawed balancing exercise and criticised the hierarchical objectives set. The presence of the Chief Constable at police headquarters, in the context of his communications with the Home Secretary, must have interfered with ACC Weatherall's decision-making, whether consciously or sub-consciously. The Court must bear in mind that this was only one disrupted news-cycle compared to the 364

others that year. She invited us to find that the prosecution had not established that conviction was a proportionate interference with the appellant's Convention rights.

61. In his submissions, Mr Chada put emphasis on the disruption being specifically targeted, such that there was no evidence of a more general impact on others not immediately involved. He joined with Ms O'Brien's emphasis on the police getting the balancing exercise wrong because of the hierarchy of objectives. This was not malicious but it was wrong. The monetary loss had to be seen in the context of the target being a large multinational company. We are not dealing with irreparable damage to the business which would be different. Mr Chada submitted that there were lesser alternatives open to the police, whether s14 conditions or arrest for breach of the peace. He suggested that there was no evidence that a conviction was required to deter future actions at this site. A mature, democratic state needed to make allowance and tolerance for actions such as these if free speech is to be exercised. On this occasion, the protesters actions did create the ability for these important issues to be heard. He was not seeking to suggest that success on appeal would be a licence to say that such protests would always be allowed.

The law – abuse of process

62. During the course of submissions, whether orally or in writing, we were referred to the following case law of relevance to our determination (as opposed to case law aimed at jurisdictional issues in the Magistrates Court):

R v Maxwell [2010] UKSC 48

R v Horseferry Road Magistrates Court ex p Bennett (1994) 98 Cr App R 114

R v Latif and Shahzad [1996] 1 All ER 353

Mullen [1999] 2 Crim App R 143

R v Grant [2005] EWCA Crim 1089.

Ahmed & another v R [2011] EWca Crim 184

Mansfield v DPP [2021] EWHC 2938

63. Although Mr Chada had highlighted, at the outset of the hearing, the prospect of a submission on the first limb of Maxwell, by the end of the hearing, it was plain that the Court was only concerned with a submission on the second limb.

64. From the authorities on abuse of process it is possible to distil a number of principles applicable to our determination of this application, none of which we would anticipate being controversial:

- (a) The burden of establishing abuse of process lies on the appellants;
- (b) The evidential standard is the balance of probabilities;
- (c) The judiciary accept a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law;
- (d) This responsibility is applicable in the field of criminal law;
- (e) The court has an inescapable duty to secure fair treatment for those who come or are brought before it;
- (f) There is a public interest in not conveying the impression that the court will adopt the approach that the end justifies any means;
- (g) Ordering a stay of proceedings, which in criminal law is effectively a permanent remedy, is a remedy of last resort;
- (h) The court has the power to stay proceedings where it offends the sense of justice and propriety to be asked to try the accused in the particular circumstances of the case;
- (i) This covers the integrity of the criminal justice system and applies where a defendant should not be standing trial at all, irrespective of the potential fairness of the trial itself;
- (j) This consideration includes a case which will undermine public confidence in the criminal justice system and bring it into disrepute;
- (k) Weighing countervailing considerations of policy and justice, it is for the judge/tribunal in the exercise of discretion to decide whether there has

been an abuse of process, which amounts to an affront to the public conscience and requires the criminal proceedings to be stayed;

- (l) An infinite variety of cases could arise. General guidance as to how the discretion should be exercised in particular circumstances has been held not to be useful;
- (m) Even if a prosecutor's motives are mixed, the court should be slow to halt a prosecution unless the conduct of the prosecution is truly oppressive;
- (n) The mere presence of an indirect or improper motive in launching [one would add necessarily because of a prosecutor's continuing duties, or in continuing] a prosecution did not necessarily vitiate it, and the court should be slow to halt such a prosecution in the case of mixed motives unless the conduct was truly oppressive;
- (o) The power to stay for abuse of process can and should be understood widely enough to embrace an application challenging a decision to prosecute [and for the reasons enunciated above, the continuation of a prosecution] on the grounds that it was arrived at under political pressure or influence or was motivated politically rather than by an objective review of proper prosecutorial considerations. This could include situations in which the original arrest had come about through political pressure, influence or motivation.

Discussion – abuse of process

65. In this case, the thrust of the appellants' argument on abuse of process is that the Home Secretary's involvement through communication with the Chief Constable operated, consciously or sub-consciously, on the decision-making of Gold Command, both in setting the policing objectives and their hierarchy. This, say the appellants, amounted to executive misconduct that interfered with the important principle of operational independence, rendering all subsequent acts, and therefore by extension the prosecution itself, an abuse of process.

66. We have considered very carefully the oral evidence and the chronology document in assessing the appellants' submissions. A feature of the submissions has been reliance on the Home Secretary's out-of-hours first contact with the Chief Constable as being something of great significance, something so out of the ordinary that it evidences a backdrop of early and inappropriate interference by the Home Secretary into the policing of the protest, tainting any subsequent communication.
67. In considering the timing and modality of the Home Secretary's communications with the Chief Constable, we are struck by an internal inconsistency in the appellants' argument. On the one hand, they assert with clarity that the purpose of the protest – not just at Broxbourne, but also the simultaneous partner actions elsewhere – was specifically designed by those responsible within XR to maximise national publicity. This primary aim was achieved, they told us, by the fact that media coverage of the disruption to newspaper distribution lasted nine days thereafter. On the other hand, the appellants complain that the Home Secretary, whose responsibility encompasses law and order, should express an early interest in a sudden and unexpected set of coordinated incidents of national significance, targeting a component of important infrastructure.
68. Furthermore, it seems clear that the Home Secretary had received some communication from the then MPS Commissioner, Cressida Dick, due to the initial, albeit mistaken, understanding that the location of Newsprinters was just within the MPS' territory. On it being clarified that the site was within the jurisdiction of Hertfordshire Constabulary, contact was then made with the Chief Constable.
69. In our judgment there is no reliable evidence that the Home Secretary's interest in the protest was generated by party-political motives, as opposed to being prompted by the responsibility that comes from the Office of State that she occupies. On the basis of this finding, we are not satisfied that, on the balance of probabilities, the Home Secretary intended to influence the police response to the protest, as opposed to seeking a line of communication to be

kept informed of developments. It is clear from the chronology that the Home Office sought updates from all three sites targeted by the protesters, doubtless being cognisant of their significance.

70. Having reached this first conclusion about the Home Secretary's communication, we must then consider whether the communications, however neutral, acted to influence policing decisions, thereby undermining or even negating operational independence.

71. The answer to this issue lies primarily in the evidence of ACC Weatherall. He is a very experienced POPS-accredited senior officer, who could not have been clearer about his being insulated from any interest from the Home Secretary or the Chief Constable. The latter's physical presence at police headquarters, in the circumstances of a major protest with unfolding consequences, is neither surprising nor noteworthy – indeed, some might have considered it more surprising if he were not taking a close interest in what was going on, even if he did not have responsibility for decision-making. That responsibility lay in a clearly defined POPS command structure that was sought to be put in place as soon as it was clear that the nature of the incident demanded it. Upon appointment as Gold Command, ACC Weatherall acted in line with proper practice and began logging his decisions and their rationale in the Gold Log.

72. The appellants seek to characterise the reference to the Home Secretary in the Gold Log as ascribing a level of significance to it that then carried through to decision-making. They would doubtless have said the same, having become aware of communications through disclosure within the proceedings, had ACC Weatherall not referred to his being told of the interest and they would then have suggested that he deliberately did not record it in order to cover it up. The important evidence, in our judgment, is what ACC Weatherall did as Gold Command, why he did it and what he said about any impact on him resulting from knowledge of high-level political interest.

73. As will be repeated below in respect of the substantive appeals, it is difficult to conceive what specific policing objectives might have been formulated other

than the three which featured on this occasion. ACC Weatherall explained the hierarchy and the reasons for it and we detected nothing that supports the appellants' contention that, even sub-consciously, his decision-making was infected by knowledge of the Home Secretary's interest. Supt Wells was rather less experienced in POPS incidents and his view of the Home Secretary's communication has to be seen in that context. He viewed political/government confidence as a legitimate consideration in his risk matrix, due to the accountability and oversight that there is of the police, particularly in the context of major incidents and, on the facts of this case, in relation to a significant component of a coordinated protest on a national scale. That it was legitimate to include it "in the mix" does not mean that it then became a source of improper influence on Silver Command's tactical decision-making and we are not persuaded that it did so.

74. As to the enquiry made by ACC Weatherall at 04.45 as to whether the removal could be expedited, the enquiry having originated with the Chief Constable, we accept ACC Weatherall's evidence that he had already made the position clear but made the enquiry to back it up. Indeed, we gained the impression that ACC Weatherall would have preferred not to have had extraneous enquiries to field, but rather to be left to concentrate on his responsibilities as Gold Command. This further undermines the suggestion that ACC Weatherall came under improper pressure, consciously or sub-consciously, to alter the course of the policing of the incident.

75. It is easy to sit in judgment after the event and criticise actions and decisions based on a clinical analysis of the contemporary documents, their contents and omissions; but just as it is easy, it is also facile. We remind ourselves that we are considering in retrospect a very dynamic, multi-faceted situation that began without advance warning, which although not in any way required to exercise one's rights under Articles 10 and 11, is relevant to the lens through which the events have to be viewed. Decisions were having to be made both prospectively and in response to developments on the ground.

76. As to the Peer Review document, we were troubled by the way in which it was sought to introduce and rely on this document without proper evidential foundation, either as to the accuracy of the notes made by non-witnesses of an interview with ACC Weatherall (which had never been shown to him for his approval and which he challenged by specific reference to wording recorded) or as to the intended meaning of phrases within the document. There was limited evidence available about the POPS-related experience of the external officers conducting the Peer Review, and we accept ACC Weatherall's evidence about the process and the outcome of the Review. In all the circumstances, we are not persuaded that the document supports any finding that there was political pressure in relation to this protest. Whether or not a less-experienced or robust Gold Command might have perceived it as such is irrelevant to our determination in this case.

77. From a careful analysis of ACC Weatherall's Gold Log, supplemented by his very detailed oral evidence and that of Supt Wells, we are not persuaded that the appellants have satisfied the burden of proving executive misconduct or indeed any influence, improper or benign, on the actions of those within the POPS command structure. The applications to stay each of the prosecutions against the five appellants are therefore refused.

The law – s137(1) Highways Act 1980

78. The offence with which each appellant was charged is contained in s137(1) of the Highways Act 1980 (HA):

Obstruction of highways and streets

137 Penalty for wilful obstruction.

- (1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

79. Section 3(1) of the Human Rights Act 1988 (HRA) provides:

“So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.”

80. By section 1(a) of the HRA, Articles 10 and 11 were amongst those of the European Convention on Human Rights incorporated into domestic law. Schedule 1 sets out the terms of those Articles:

Article 10

Freedom of expression

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11

Freedom of assembly and association

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

81. Another Article which becomes relevant to our consideration is Article 8, which provides:

Article 8

Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.

- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

82. The interplay between what amounts to lawful authority and excuse and the exercise of rights under Articles 10 and 11 was the subject of detailed consideration by the Supreme Court in *DPP v Ziegler and others* [2021] UKSC 23. It is necessary to quote parts of that judgment in detail, before addressing its implications for the instant appeals.

83. At paragraph 57 of the judgment, Lord Hamblen and Lord Stephens, with whom Lady Arden agreed (paragraph 94) to form the majority opinion, discussed the definition of restrictions in relation to the qualified rights in Articles 10 and 11. Specifically, they said this:

“57. ... In Kudrevičius v Lithuania (2016) 62 EHRR 34, para 100 the European Court of Human Rights (“ECtHR”) stated that “The term ‘restrictions’ in article 11(2) must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards” so that it accepted at para 101 “that the applicants’ conviction for their participation in the demonstrations at issue amounted to an interference with their right to freedom of peaceful assembly”. Arrest, prosecution, conviction, and sentence are all “restrictions” within both articles. Different considerations may apply to the proportionality of each of those

restrictions. The proportionality of arrest, which is typically the police action on the ground, depends on, amongst other matters, the constable's reasonable suspicion. The proportionality assessment at trial before an independent impartial tribunal depends on the relevant factors being proved beyond reasonable doubt and the court being sure that the interference with the rights under articles 10 and 11 was necessary. The police's perception and the police action are but two of the factors to be considered. It may have looked one way at the time to the police (on which basis their actions could be proportionate) but at trial the facts established may be different (and on that basis the interference involved in a conviction could be disproportionate). The district judge is a public authority, and it is his assessment of proportionality of the interference that is relevant, not to our mind his assessment of the proportionality of the interference by reference only to the intervention of the police that is relevant. In that respect we differ from Lord Sales (see for instance para 120, 153 and 154) who considers that the defence of "lawful excuse" under section 137 depends on an assessment of the proportionality of the police response to the protest and agree with Lady Arden at para 94 that "the more appropriate question is whether the convictions of the appellants for offences under section 137(1) of the Highways Act 1980 were justified restrictions on the right to freedom of assembly under article 11 or not"

84. The Supreme Court (at paragraph 58) approved that which the Divisional Court described as "the usual enquiry" under the HRA, which requires consideration of five questions:

- (a) Is what the defendant did was in exercise of one of the rights in Articles 10 or 11?
- (b) If so, is there an interference by a public authority with that right?
- (c) If there is an interference, is it prescribed by law?

- (d) If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Article 10 or Article 11, for example the protection of the rights of others?
- (e) If so, is the interference 'necessary in a democratic society' to achieve the legitimate aim?

85. The Divisional Court noted that question (e) above would in turn require consideration of the sub-questions which arise in order to assess whether an interference is proportionate. The sub-questions are:

- (a) Is the aim sufficiently important to justify interference with a fundamental right?
- (b) Is there a rational connection between the means chosen and the aim in view?
- (c) Are there less restrictive alternative means available to achieve that aim?
- (d) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

86. The Supreme Court (at paragraph 59) emphasised that:

“59. Determination of the proportionality of an interference with EHCR rights is a fact-specific enquiry which requires evaluation of the circumstances in the individual case.”

As the Divisional Court observed, a fair balance must be struck between the different rights and interests at stake.

87. In its review of the decisions of the European Court of Human Rights, the Supreme Court (at paragraph 67) noted the ECtHR's observations in *Kudrevičius v Lithuania* that intentional disruption of traffic was “not an uncommon occurrence in the context of the exercise of freedom of assembly in modern societies”. However, the Court continued that “physical conduct purposely obstructing traffic and the ordinary course of like in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by article 11 of the Convention”. The Supreme Court said this:

“It is apparent from Kudrevičius that purposely obstructing traffic still engages article 11 but seriously disrupting the activities carried out by others is not at the core of that freedom so that it “might”, not “would”, have implications for any assessment of proportionality. In this way, such disruption is not determinative of proportionality. On the facts of that case the Lithuanian authorities had struck a fair balance between the legitimate aims of the “prevention of disorder” and “protection of the rights and freedoms of others” and the requirement of freedom of assembly. On that basis the criminal convictions and the sanctions imposed were not disproportionate in view of the serious disruption of public order provoked by the applicants. However, again, the point of relevance to this appeal is that deliberate obstructive conduct which has a more than de minimis impact on others still requires careful evaluation in determining proportionality.”

88. At paragraph 71 onwards, the Supreme Court identified various factors applicable to the evaluation of proportionality, the examination of which should be “open textured without being given any pre-ordained weight”. We quote this section of the judgment in full:

“72. A non-exhaustive list of the factors normally to be taken into account in an evaluation of proportionality was set out at para 39 of the judgment of Lord Neuberger of Abbotsbury MR in City of London Corpn v Samede (see para 17 above). The factors included “the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public”. At paras 40-41 Lord Neuberger identified two further factors as being: (a) whether the views giving rise to the protest relate to “very important issues” and whether they are “views which many would see as being of considerable breadth, depth and relevance”; and, (b) whether the protesters “believed in the views they were expressing”. In relation to (b) it is hard to conceive of any

situation in which it would be proportionate for protesters to interfere with the rights of others based on views in which the protesters did not believe.

73. *In Nagy v Weston (see para 9 above) one of the factors identified was “the place where [the obstruction] occurs”. It is apparent, as in this case, that an obstruction can have different impacts depending on the commercial or residential nature of the location of the highway.*

74. *A factor listed in City of London Corpn v Samede was “the extent of the actual interference the protest causes to the rights of others”. Again, as in this case, in relation to protests on a highway the extent of the actual interference can depend on whether alternative routes were used or could have been used. In Primov v Russia at para 146 a factor taken into account in relation to proportionality by the ECtHR was the availability of “alternative thoroughfares where the traffic could have been diverted by the police”.*

75. *Another factor relevant to proportionality can be discerned from para 171 of the judgment of the ECtHR in Kudrevičius in that it took into account that “the actions of the demonstrators had not been directly aimed at an activity of which they disapproved, but at the physical blocking of another activity (the use of highways by carriers of goods and private cars) which had no direct connection with the object of their protest, namely the government’s alleged lack of action vis-à-vis the decrease in the prices of some agricultural products”. So, a relevant factor in that case was whether the obstruction was targeted at the object of the protest.*

76. *Another factor identified in City of London Corpn v Samede was “the importance of the precise location to the protesters”. In Hall v Mayor of London [2010] EWCA Civ 817; [2011] 1 WLR 504, para 37 it was acknowledged by Lord Neuberger, with whom Arden and Stanley Burnton LJJ agreed, that “The right to express views publicly, ..., and*

*the right of the defendants to assemble for the Page 31 purpose of expressing and discussing those views, extends ... to the location where they wish to express and exchange their views". In *Sáska v Hungary* (Application No 58050/08) at para 21 the ECtHR stated that "the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of article 11". This ability to choose, amongst other matters, the location of a protest was also considered by the ECtHR in *Lashmankin v Russia* (Application No 57818/09). At para 405 it was stated that:*

"... the organisers' autonomy in determining the assembly's location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact." (Emphasis added)

In this case the appellants ascribed a particular "symbolic force" to the location of their protest, in the road, leading to the Excel Centre.

*77. It can also be seen from para 405 of *Lashmankin* that the organisers of a protest have autonomy in determining the manner of conduct of the protest. That bears on another factor set out in *City of London Corp'n v Samede*, namely "the extent to which the continuation of the protest would breach domestic law". So, the manner and form of a protest on a highway will potentially involve the commission of an offence contrary to section 137 of the 1980 Act. However, if the protest is peaceful then no other offences will have been committed, such as resisting arrest or assaulting a police officer. In *Balçik v Turkey* (Application No 25/02) at para 51 the ECtHR took into account that there was no evidence to suggest that the group in that case*

“presented a danger to public order, apart from possibly blocking the tram line”. So, whilst there is autonomy to choose the manner and form of a protest an evaluation of proportionality will include the nature and extent of actual and potential breaches of domestic law.

*78. Prior notification to and co-operation with the police may also be relevant factors in relation to an evaluation of proportionality, especially if the protest is likely to be contentious or to provoke disorder. If there is no notification of the exact nature of the protest, as in this case, then whether the authorities had prior knowledge that some form of protest would take place on that date and could have therefore taken general preventive measures would also be relevant: see *Balçik v Turkey* at para 51. However, the factors of prior notification and of co-operation with the police and the factor of any domestic legal requirement for prior Page 32 notification, must not encroach on the essence of the rights: see *Molnar v Hungary* [2008] ECHR (Application No 10346/05), paras 34-38 and *DB v Chief Constable of the Police Service of Northern Ireland* [2017] UKSC 7; [2017] 3 LRC, para 61.”*

89. In addressing the specific factors that founded the decision of the District Judge in *Ziegler*, the Supreme Court made various observations, many of which are pertinent to our judgment in these appeals. We set out below the particularly relevant extracts:

*“80. ... The ECtHR requires “a certain degree of tolerance towards peaceful gatherings”, see *Primov v Russia* at para 62 above. The fact that this was intended to be and was a peaceful gathering was relevant. Furthermore, the factor in 38(b) that the appellants’ actions did not give rise, directly or indirectly, to any form of disorder was also relevant. There are some protests that are likely to provoke disorder. This was not such a protest. Rather it was a protest on an approach road in a commercial area where there was already a sizeable police presence in anticipation of demonstration without there being any counter-demonstrators or any risk of clashes with counterdemonstrators: (for the approach to the risk of clashes with*

counter-demonstrations see para 150 of Primov v Russia). The protest was not intended to, nor was it likely to, nor did it in fact provoke disorder. There were no “clashes” with the police. The factor taken into account by the district judge at 38(c) related to the commission of any other offences and this also was relevant, as set out in City of London Corpn v Samede (see para 17 above) in which one of the factors listed was “the extent to which the continuation of the protest would breach domestic law”. The Divisional Court considered that none of these factors prevented the offence of obstruction of the highway being committed in a case such as this. That reasoning is correct in that Page 33 the offence can be committed even if those factors are present. However, the anterior question is proportionality, to which all those factors are relevant. ...

...

“81. ...

(i) ... In fact, the highway from the Excel Centre was not obstructed, so throughout the duration of the protest this route from the Excel Centre was available to be used. Moreover, whilst this approach road for vehicles to the Excel Centre was obstructed it was common ground that access could be gained by vehicles by another route. On that basis members of the public were not “completely prevented” from getting to the Excel Centre, though it is correct that for a period vehicles were obstructed from using this particular route.

(ii) ... Targeting and whether it was effective are relevant matters to be evaluated in determining proportionality.

(iii) The choice of location was a relevant factor to be taken into account ...

(iv) ... As we explain in paras 83-84 below whether the period of 90 to 100 minutes of actual obstruction was “significant” or “limited” depends on the context. ...

(v) *The Divisional Court's conclusion referred to disruption to "members of the public". However, there were no findings by the district judge as to the number or even the approximate number of members of the public who were inconvenienced by this demonstration which took place on one side of an approach road to the Excel Centre in circumstances where there were other available routes for deliveries to the Centre (see para 19 above). Furthermore, there were no factual findings that the protest had any real adverse impact on the Excel Centre.*

"82. ... As in Primov v Russia at paras 132-136 the appellant's message "undeniably concerned a serious matter of public concern and related to the sphere of political debate". There was no error or flaw in the reasoning of the district judge in taking this factor into account in relation to the issue of proportionality.

"83. ... We agree that the proportionality assessment which potentially leads to a conviction can only take into account the obstruction of the highway that actually occurs.

"84. ... The appraisal as to whether the period of time was of "limited duration" or was for "a not insignificant amount of time" or for "a significant period of time" was a fact-sensitive determination for the district judge which depended on context including, for instance the number of people who were inconvenienced, the type of the highway and the availability of alternative routes. We can discern no error or flaw in his reasoning given that there was no evidence of any significant disruption caused by the obstruction. Rather, it was agreed that there were alternative routes available for vehicles making deliveries to the Excel Centre ...

"85. ... We agree that for the police to act it was obvious that they did not need to receive a complaint. They were already at the Excel Centre in anticipation of demonstrations and were immediately aware of this demonstration by the appellants. However, the matter to which the

district judge was implicitly advertent was that the lack of complaint was indicative of a lack of substantial disruption to those in the Excel Centre. If there had been substantial disruption one might expect there to have been complaints. Rather, on the basis of the facts found by the district judge there was no substantial disruption. ...

“86. ... However, as set out at para 67 above whether the appellants “believed in the views they were expressing” was relevant to proportionality. Furthermore, it is appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. Political views, unlike “vapid tittle tattle” are particularly worthy of protection. Furthermore, at para 38(h) the district judge took into account that the appellants were not a group of people who randomly chose to attend this event hoping to cause trouble. We consider that the peaceful intentions of the appellants were appropriate matters to be considered in an evaluation of proportionality. ...”

Discussion – substantive appeals

90. We have reminded ourselves that the burden of proof lies on the Respondent to prove each element of the offence against each Appellant. The standard of proof is the criminal standard throughout.

91. The elements of an offence under s137(1) HA are that:

- (a) The offence took place on a public road;
- (b) There was an obstruction;
- (c) The obstruction was wilful; and
- (d) The offence was committed without lawful authority or excuse.

Elements (a) to (c) above are not in dispute and are clearly established on the evidence presented to the Court. The issue for determination is whether the exercise of rights under Articles 10 and 11 has been proved not to amount to a lawful excuse. To decide this involves the fact-specific proportionality assessment described in detail above, in the context not of a review of the proportionality of the police action in arresting and charging the Appellants,

but in the context of whether conviction before this Court is a proportionate interference with their Convention rights.

92. We turn to our findings of fact surrounding the protest:

- (a) At 10pm on the night of Friday 4 September 2020, some fifty protesters arrived without warning at the Broxbourne site of Newsprinters; all five Appellants were amongst these protesters;
- (b) A group of supporters accompanied the protesters to provide encouragement and stood to the side of the highway;
- (c) Simultaneously, protesters launched 'partner' protests at Newsprinters' other sites in Knowsley, Liverpool and in Glasgow;
- (d) The sites were targeted in a coordinated campaign, designed by XR to disrupt an entire print run of those newspapers published by Newsprinters;
- (e) The aim of the protest was primarily to raise the profile on a national level of the immediacy of the climate crisis;
- (f) The target of the protest was chosen by the protesters as being symbolic of the power of the press over public opinion and its failure to report the scientific evidence about climate change;
- (g) Each Appellant in evidence demonstrated a genuine belief in the reason(s) for the protest;
- (h) Some of the Appellants disclosed additional reasons more personal to them for supporting the protest on this particular target;
- (i) The Great Eastern Road is a highway, but has only a single point of access and egress, the other end of the road leading into the Newsprinters' secure site (and another premises with which we are not concerned);
- (j) At its access and egress point, the Great Eastern Road leads directly to the A10 dual carriageway which, in turn, is very proximate to a junction of the M25 motorway;
- (k) The Newsprinters' site has a large car park, which was known about by at least some of the protesters in advance;
- (l) At 10pm, more than one hundred employees were onsite and in addition a number of drivers were already present who had arrived early in vehicles to collect papers for distribution;

- (m) Although the A10 was kept clear in one lane, a long trail of distribution vehicles became backed-up along the other lane;
- (n) On arrival, the protesters set up two vertical bamboo structures with individuals suspended at height; the base of each structure had a number of protesters around it in a lock-on device; other protesters were locked-on in a larger lock-on device; and protesters were located on the roof of the two vehicles blocking the gate to the Newsprinters site, as well as locked-on underneath the vehicles;
- (o) The construction and arrangement of the bamboo structures and the lock-on devices (involving multiple tubing and cement) was deliberately intended to ensure that any attempts to remove the protesters would take a considerable period of time, requiring specialist police resources and great care to be exercised so as not to injure any of those locked-on;
- (p) The protesters had agreed among themselves that the protest would be time-limited, by which they meant that it would conclude at 11am on Saturday 5 September 2020, thirteen hours after it had begun;
- (q) The choice of an 11am end-time was arbitrary and not informed by any knowledge of the timing of the print-run or an understanding of the process; rather it was speculatively chosen as a time by which it was assumed that the desired disruption would have been achieved;
- (r) Attempts by the police to negotiate with the protesters, both as to the end-time and/or the potential for moving the protest (whether by unblocking a part of the highway to at least allow vehicles out of the site or moving to the grass verge to the side of the highway) met with neither success nor the semblance of any potential for flexibility;
- (s) Given our findings at sub-paragraphs (m) and (n) above, it is evident that the protesters were intent on occupying their choice of location for the length of time they had determined, irrespective of the impact;
- (t) The Appellants' assertions that they could have been relied on to 'stand down' at 11am is incompatible with the specific lock-on devices employed, from which protesters would have to have been released by specialist operation; for the small number of protesters who were not secured to lock-on devices, they could have stood down at any time before 11am, but chose not to, despite the intense police operation to release the others;

- (u) We accept the evidence of PC Wilson that the supporters cordoned off to the side of the protest had megaphones and, in addition to encouragement, provided updates on events at the other protest sites, which included the success of the protest in Knowsley by the early hours of Saturday morning; we make no finding as to whether the Appellants heard such updates;
- (v) Pedestrian access from the Newsprinters site was not impeded, but all vehicular movement in and out was completely prevented throughout the protest until between 10am and 11am on Saturday morning;
- (w) The shift for workers onsite had begun at around 7pm on Friday 4th September and was due to finish at approximately 4.30am on Saturday 5th September;
- (x) Newsprinters did arrange for taxis for some staff in order to get them home, however other staff needed their cars and remained onsite until they were able to leave with them; the distribution drivers already onsite also had to remain;
- (y) The Appellants relied on an expectation that Newsprinters would provide taxis for all staff to get them home, without any knowledge or particular consideration as to whether this was feasible and/or whether, as the protest was planned for Friday night into the weekend, any workers might have a need for the use of their cars in pursuance of their Article 8 rights;
- (z) A number of workers at the site lived a considerable distance away, some on the South Coast as a legacy of the previous siting of Newsprinters in Wapping;
- (aa) Whilst the Appellants made assertions about the availability of public transport, the actual evidence before the Court identified a train station at a distance from the site on foot and no buses that travelled across the A10; in any event, for those staff for whom public transport might have been an option, its availability until the latter hours of the protest would have been severely limited, if it existed at all, given the timing of the protest through the early hours of Saturday morning;
- (bb) The Appellants' opinion that allowing pedestrian movement offered workers a genuine and realistic option was not supported by the

evidence at the time or as subsequently revealed by Messrs Barker and Brett;

- (cc) Some workers/drivers onsite had to sleep in their cars as they would be due back to work on the following shift.

93. To the extent that this Court takes account of the decisions of the police in dealing with the protest, we make the following findings:

- (a) The initial attendance of officers on scene scoped the nature and extent of the protest and its likely duration, and reported these to headquarters;
- (b) Realising that this was an incident that required a POPS response, the duty Gold Command tried to source suitably accredited officers;
- (c) In time, ACC Weatherall accepted appointment as Gold Command and Silver and Bronze Command officers as well as other units were sourced;
- (d) The setting of the objectives, in the hierarchy described in evidence, was entirely understandable in the circumstances which presented themselves to Gold Command, bearing in mind the features of the location, the specific actions of the protesters and the rights of others that needed to be considered;
- (e) There is no evidence that the police response was simply to remove protesters as quickly as possible and to ignore their Article 10/11 rights;
- (f) Attempts at negotiation with the protesters were unsuccessful and it was clear that the impact of their actions would increase once workers completed their shift, in the context also of a fleet of vehicles building up on the A10 that had arrived as planned to effect distribution;
- (g) As the impact on Newsprinters and its employees/contractors grew, and in the absence of any flexibility from the protesters' side, the decision to arrest and begin removal was taken;
- (h) The suggestion during the hearing that s14 POA conditions might have been issued was fanciful, given the situation created by the protest;
- (i) The decision to arrest for the s137(1) offence was taken not by the POPS Command alone, but following appropriate consultation with the senior investigating officer onsite;

- (j) Whether or not any of the Appellants personally received the five stage appeal to desist from the protest without arrest, none were under any illusion but that continued involvement risked arrest;
- (k) Overall, the actions of the police were a proportionate interference with the Convention rights of the protesters due to the need to balance those rights with the competing Convention rights of the workers and others within the Newsprinters site.

94. In answer to the questions in paragraph (84) above:

- (a) Yes; the Appellants were acting in exercise of rights under Articles 10 and/or 11;
- (b) Yes; dismissing the appeal and upholding each Appellant's conviction would be an interference by a public authority, in this case the Court, with that right;
- (c) Yes; the interference is prescribed by law;
- (d) Yes; the interference is in the pursuit of a legitimate aim, precisely because it seeks to protect the rights of others;
- (e) Yes; the interference is necessary in a democratic society to achieve the legitimate aim for the following reasons:
 - (i) The aim of protecting the Article 8 rights of all those affected by a determined, sophisticated, pre-planned and unannounced protest that had a significant and extended impact over many hours, is sufficiently important to justify interference with a fundamental right;
 - (ii) There is a rational connection between conviction for the s137(1) offence and the aim in view, because the offence reflects the realities of the actions taken by the Appellants in the context of the direct impact on others, to much of which the Appellants gave little or no thought and to the extent they did give thought, they in fact projected their view of how others should react rather than being genuinely concerned with the detrimental impact on ordinary people;
 - (iii) The only alternative available to this Court on appeal is to allow the appeals, which would not only not achieve the aim, but it would be

counterproductive to the aim of protecting the rights of others as it would not deter future protests of the same or similar design;

- (iv) The dismissal of the appeals and the upholding of the convictions does indeed strike a fair balance between the rights of the Appellants and the general interest of the community, including the rights of others. This is because proportionality is a fact-specific enquiry and the actions of the Appellants in this case in pursuit of their Article 10 and/or 11 rights overrode disproportionately the rights of others who were significantly, adversely affected. The dismissal of the appeals and the upholding of the convictions – on the very specific facts of the cases before us – redresses the balance to a point at which it is objectively fair.

Conclusion

95. For the reasons given above, the applications to stay for abuse of process are refused and each of the appeals against conviction is dismissed.