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IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
His Honour Judge Hehir
T20227305 & T20220798

ON APPEAL FROM THE CROWN COURT AT BASILDON
His Honour Judge Collery KC
T20230007, T20230014 & T20240019

ON APPEAL FROM THE CROWN COURT AT BASILDON
His Honour Judge Graham
T20227191, T20220422 & T20230086

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/03/2025

Before :

THE LADY CARR OF WALTON-ON-THE-HILL
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE LAVENDER
and
MR JUSTICE GRIFFITHS

- -

Between :

JULIAN ROGER HALLAM
LUCIA WHITTAKER DE ABREU
DANIEL SHAW
LOUISE CHARLOTTE LANCASTER
CRESSIDA GETHIN

PAUL SOUSEK
GAIE DELAP
THERESA HIGGINSON
PAUL BELL
GEORGE SIMONSON

CHRIS BENNETT
JOE HOWLETT

SAMUEL JOHNSON
LARCH MAXEY

PHOEBE PLUMMER
ANNA ELLEN HOLLAND **Appellants**

- and -

REX **Respondent**

- and -

FRIENDS OF THE EARTH LTD
GREENPEACE LTD **Interveners**

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Danny Friedman KC and Owen Greenhall (instructed by **Hodge Jones & Allen Solicitors**) for **Hallam, Whittaker de Abreu, Shaw** and **Gethin**
Danny Friedman KC and Robbie Stern (instructed by **Hodge Jones & Allen Solicitors**) for **Lancaster**
Raj Chada, Solicitor Advocate (instructed by **Hodge Jones & Allen Solicitors**) for **Bennett** and **Maxey**
Jacob Bindman (instructed by **Hodge Jones & Allen Solicitors**) for **Bell, Delap, Sousek** and **Higginson**
John Briant (instructed by **Amosu Robinshaw Ltd**) for **Simonson**
Francesca Cociani, Solicitor Advocate, (instructed by **Hodge Jones & Allen Solicitors**) for **Howlett**
Laura O'Brien, Solicitor Advocate, (instructed by **Hodge Jones & Allen Solicitors**) for **Johnson**
Rosalind Comyn (instructed by **Hodge Jones & Allen Solicitors**) for **Plummer**
Brenda Campbell KC (instructed by **Hodge Jones & Allen Solicitors**) for **Holland**

Jocelyn Ledward KC and Fiona Robertson (instructed by the **Crown Prosecution Service**) for the **Respondent** in respect of **Hallam, Whittaker de Abreu, Shaw, Gethin and Lancaster**
Paul Sharkey and Edward Gordon-Saker (instructed by the **Crown Prosecution Service**) for the **Respondent** in respect of **Sousek, Delap, Bell, Simonson and Higginson**
James Curtis KC and Charlotte Oliver (instructed by the **Crown Prosecution Service**) for the **Respondent** in respect of **Bennett, Howlett, Johnson and Maxey**
Ben Lloyd (instructed by the **Crown Prosecution Service**) for the **Respondent** in respect of **Plummer and Holland**

Alex Goodman KC and Jessica Jones (instructed by **Lloyds PR Solicitors**) for the **Interveners**

Hearing dates: 29 and 30 January 2025

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Approved Judgment

This judgment was handed down in Court 4 at 10.00am on Friday 7 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The Lady Carr of Walton-on-the-Hill, CJ :

The structure of this judgment is as follows:

(1) Introduction

1. 16 applications for leave to appeal against sentence have been referred to the full court by the Registrar. We grant leave to appeal on all applications and proceed to consider the substantive appeals.

2. The appellants were among the defendants sentenced in four cases for offences committed in connection with protests in the period from August to November 2022. The protests were committed in the name of Just Stop Oil about climate change issues. In this introductory section, we summarise the four cases in chronological order of the offences committed.

3. ***The Thurrock Tunnels Case***: In August 2022 protesters occupied tunnels under the roads providing access to the industrial estate which includes the Navigator oil terminal in Thurrock, Essex. Their activities caused the roads to be closed. Four appellants, each convicted on 20 March 2024 of conspiracy to cause a public nuisance contrary to s. 1(1) of the Criminal Law Act 1977, appeal against the immediate custodial sentences imposed on them on 6 September 2024 in the Crown Court at Basildon by HHJ Graham, namely:

   i) Chris Bennett: 18 months' imprisonment.

   ii) Dr Larch Maxey: 36 months' imprisonment.

   iii) Samuel Johnson: 18 months' imprisonment.

   iv) Joe Howlett: 15 months' imprisonment.

4. ***The Sunflowers Case***: On 14 October 2022 two protesters threw soup onto Vincent van Gogh's painting known as "Sunflowers" in the National Gallery. They were each convicted on 25 July 2024 of criminal damage contrary to s. 1(1) of the Criminal Damage Act 1971 and appeal against the immediate custodial sentences imposed on them on 27 September 2024 in the Crown Court at Southwark by HHJ Hehir, namely:

   i) Phoebe Plummer: 24 months' imprisonment.

   ii) Anna Holland: 20 months' imprisonment.

5. ***The M25 Conspiracy Case:*** Between 7 and 10 November 2022 45 protesters were arrested after climbing, or attempting to climb, onto various gantries across the M25 motorway. Five appellants, each of whom was convicted on 11 July 2024 of conspiracy to cause a public nuisance contrary to s. 1(1) of the Criminal Law Act 1977, appeal against the custodial sentences imposed on them on 18 July 2024 in the Crown Court at Southwark by HHJ Hehir, namely:

   i) Roger Hallam: 5 years' imprisonment.

   ii) Daniel Shaw: 4 years' imprisonment.

   iii) Lucia Whittaker de Abreu: 4 years' imprisonment.

iv) Louise Lancaster: 4 years' imprisonment.

v) Cressida Gethin: 4 years' imprisonment.

6. ***The M25 Gantry Climbers Case:*** Five appellants were among those who climbed gantries over the M25 on 9 November 2022 as part of the protest organised by the defendants in the M25 Conspiracy case. On the second day of trial, 5 March 2024, they pleaded guilty to causing a public nuisance contrary to s. 78(1) of the Police, Crime, Sentencing and Courts Act 2022 (s.78(1)) (the 2022 Act). They appeal against the custodial sentences imposed on them on 1 August 2024 in the Crown Court at Basildon by HHJ Collery KC, namely:

i) Gaie Delap: 20 months' imprisonment.

ii) Paul Sousek: 20 months' imprisonment.

iii) Theresa Higginson: 24 months' imprisonment.

iv) Paul Bell: 22 months' imprisonment.

v) George Simonson: 24 months' imprisonment.

7. These appeals raise certain general issues concerning the approach to sentencing in cases of this nature which are common to some or all of the individual cases. We were provided with lengthy written submissions and authorities by all parties, including the interveners, supplemented by two days of oral submissions. Nevertheless, the central points of principle can be made shortly:

i) The exercise of sentencing in cases of non-violent protests is to be carried out in accordance with normal sentencing principles, including those contained in ss. 57, 63 and 231(2) of the Sentencing Act 2020.

ii) The correct approach to issues that may arise when sentencing in cases of non-violent protests, such as conscientious motivation and deterrence, was considered authoritatively in *R v Trowland* [2023] EWCA Crim 919; [2024] 1 WLR 1164 (*Trowland*), to which there was no challenge before us.

iii) The sentencing exercise in cases of non-violent protest should not be over-complicated because of the engagement of the European Convention of Human Rights (ECHR). Whether or not Articles 10 and/or 11 of the ECHR (Article 10; Article 11) are engaged should be simple; if engaged, the court then has to carry out what should be a straightforward proportionality exercise. There should be no need to make extensive reference to domestic or international authorities. The parties agreed that the common law and the ECHR are in step. As was also common ground, if the common law principles in *Trowland* (identified below) are applied properly, the defendant's ECHR rights should be observed.

iv) References to the sentencing outcomes in different cases are unlikely to be helpful, since each case will turn on its own facts. It can also be dangerous. The parties spent much time pointing to the custodial sentence (of three years) imposed on Morgan Trowland. However, the term of three years was not a tariff of any sort. Indeed, whilst upheld on appeal, it was held to be severe (and

arguably manifestly excessive). An approach that treats a three year term for offending similar to that in *Trowland* as a benchmark risks undesirable and unwarranted sentence inflation.

8. We address the general issues first before turning to the facts of the individual cases.

(2) The Common Issues

(2)(a) R v Trowland

9. *Trowland* concerned the sentences imposed on two Just Stop Oil protesters who disrupted the M25 motorway by climbing onto the Queen Elizabeth II bridge above the motorway on 17 October 2022. They were each convicted on 4 April 2023 of causing a public nuisance contrary to s. 78(1). They appealed against the sentences imposed on them on 21 April 2023 in the Crown Court at Basildon, namely 3 years' imprisonment in the case of Morgan Trowland, and 2 years and 7 months' imprisonment in the case of Marcus Decker.

10. The judgment of the court (at [42] to [51]) addressed the relevant legal background and principles authoritatively.

11. It dealt first with the introduction of the new offence in s. 78 of the 2022 Act (s. 78) as follows:

> "42. …Section 78, which came into force on 28 June 2022, enacted a new offence of intentionally or recklessly causing public nuisance and (by section 78(6)) abolished the common law offence of public nuisance. It was introduced in the context of increasing non-violent protest offending by organisations such as Extinction Rebellion and Insulate Britain.

12. The court went on:

> "46. By section 78 Parliament thus introduced a new offence which covers (intentional or reckless) non-violent protest (for which there is no reasonable excuse). Three points deserve emphasis. First, s. 78(1)(c) introduces a fault element (of intention or recklessness), which the common law offence did not require. The LCR commented that: "[i]t is unjust that defendants should be exposed to such a serious sanction unless there is equally serious fault on their part" (see [3.53]). Secondly, s. 78(1)(b)(ii) makes it a criminal offence if a person "obstructs the public or a section of the public in the exercise or enjoyment or a right that may be exercised or enjoyed by the public at large". There is no qualification that the act of obstruction must be serious or significant before it becomes a criminal offence. Thirdly, custodial sentences of up to 10 years can be warranted."

13. The court also commented later:

> "83… In implementing section 78 Parliament expressed its clear intention that stringent custodial sentences may be required for (intentional or reckless) non-violent protest offending for which there is no reasonable

excuse. The 10-year maximum term provides sentencing context that was previously absent; it represented Parliament's assessment of the seriousness of the offending."

14. The court addressed the correct approach to sentencing for s. 78(1) offences as follows:

> "47. There is no definitive Sentencing Council Guideline specific to the offence (nor for any obvious analogous offence). The court thus takes into account the statutory maximum and any relevant sentencing judgments of this court. We have not been shown any appellate judgments addressing the sentencing regime for the statutory offence of public nuisance, although there are appellate judgments arising out of sentences for the old common law offence. They are considered below, in particular *Roberts* and *Brown*, where the relevant Strasbourg jurisprudence was also examined.
>
> 48. The seriousness of the offence is to be assessed by considering the culpability of the offender and the harm caused by the offending (see s. 63 of the Sentencing Act 2020). The court must also consider which of the five purposes of sentencing identified in s. 57 of the Sentencing Act 2020, namely punishment, reduction of crime (including its reduction by deterrence), reform and rehabilitation, public protection and the making of reparation, it is seeking to achieve through the sentence that is to be imposed. Once a provisional sentence is arrived at, the court takes into account relevant aggravating and mitigating features. Other considerations, such as totality, may be engaged under the stepped approach set out in the Sentencing Council's General Guideline: Overarching Principles. Custodial sentences must be what is, in the opinion of the court, the shortest term commensurate with the seriousness of the offence (see s. 231(2) of the Sentencing Act 2020).
>
> 49. The (qualified) rights to freedom of expression and assembly under Articles 10 and 11 are relevant to sentence. Article 11 is generally seen as a more specific, or lex specialis, form of the right to freedom of expression in Article 10, and the two can be considered together. Particular caution is to be exercised in imposing a custodial sentence in non-violent protest cases. (See *Taranenko v Russia* (App No 19554/05) (2014) ECHR 485 ; 37 BHRC 285 at [87]; *Kudrevicius v Lithuania* (App No 37553/05) (2016) 62 EHRR 34; 40 BHRC 114 ("Kudrevicius") at [146]; *Roberts* at [43].) It may also be relevant if the views being expressed relate to important and substantive issues (see *DPP v Ziegler and others* [2021] UKSC 23; [2022] AC 408 ("*Ziegler*") at [72]), although we emphasise immediately below the limits of such consideration. Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case. It is a flexible notion, which depends on fair and objective judicial assessment; there are no rigid rules to be applied. The inquiry requires consideration of the questions identified by the Divisional Court at [63] to [65] of its judgment in *DPP v Ziegler* [2019] EWHC 71 (Admin); [2020] QB 253 (cited by the Supreme Court at [16]).

> 50. It is no part of the judicial function to evaluate (or comment on) the validity or merit of the cause(s) in support of which a protest is made (see Roberts at [32]). However, a conscientious motive on the part of protesters may be a relevant consideration, in particular where the offender is a law-abiding citizen apart from their protest activities. In such cases, a lesser sanction may be appropriate: a sense of proportion on the part of the offender in avoiding excessive damage or inconvenience may be matched by a relatively benign approach to sentencing. The court may temper the sanction imposed because there is a realistic prospect that it will deter further law-breaking and encourage the offender to appreciate why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law is contrary to the protesters' own moral convictions. However, the more disproportionate or extreme the action taken by the protester, the less obvious is the justification for reduced culpability and more lenient sentencing. (See *R v Jones (Margaret)* [2006] UKHL 16; [2007] 1 AC 136 ("*Jones*") at [89]; *Roberts* at [33] and [34]; *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29 ("*Cuadrilla*") at [98] and [99]; *National Highways Ltd v Heyatawin and others* [2021] EWHC 3078 (QB); [2022] Env LR 17 at [50] to [53]; *Brown* at [66].)
>
> 51. Ultimately, whether or not a sentence of immediate custody for this type of offending is warranted, and if so what length of sentence is appropriate, will be highly fact-sensitive, set in the context of the relevant legislative and sentencing regime identified above."

15. The court also indicated that conscientious motivation was a factor most logically relevant to the assessment of culpability, as opposed to general mitigation (see [55]).

16. These general principles are applicable in the present cases, while recognising that the M25 Gantry Climbers case was the only case in which the defendants were convicted of the substantive offence of causing a public nuisance, contrary to s. 78(1). (As set out above, in the Thurrock Tunnels and M25 Conspiracy cases the defendants were convicted of conspiracy to cause a public nuisance; and in the Sunflowers case the defendants were convicted of criminal damage, for which there is a Sentencing Council Guideline.)

17. In terms of the application of the principles to the facts in Trowland and conscientious motivation, the court stated:

> "56. The judge does appear to have treated the protesters' conscientious motives primarily as a matter of mitigation (for which he applied 25% credit). This reflected the manner in which the issue was presented to him on behalf of the protesters at the time of sentencing (i.e. that this was a matter of mitigation). As set out above, we consider that, strictly speaking, these were matters more relevant to culpability. However, the judge elsewhere referred to the fact that the protesters' motives led him to reduce his assessment of their culpability; and, ultimately, we do not consider that any error in approach was material. What matters is whether the protesters' conscientious motives which caused them to exercise their rights of freedom of expression and assembly were

reflected properly in the ultimate sentences. As set out further below, we consider that they were."

18. As for culpability, the court stated:

> "72. The judge was entitled to find the protesters' culpability to be high, despite their conscientious motivation, not least given the extensive planning involved. There was an event planner working with the protesters; the bridge had been chosen as a spectacular protest site in order to attract media attention; another individual had dropped them off on the bridge and then called the police; Mr Trowland had sketched the bridge to work out how the plan could be executed; the date had been chosen by reference to the government's autumn agreement to increase gas and oil licences; Mr Trowland undertook media communications training in order that his message could be better communicated; both protesters practised climbing and throwing ropes between them to facilitate the erection of the banner and the hammocks; specific equipment had been purchased and they carried out a risk assessment; they took food and drink with them.
>
> 73. The reasons given by the judge for his finding of culpability were entirely sound: the choosing of a high profile target for maximum disruption; the extensive organisation and planning; the protesters' awareness that the road would be closed and disruption would be caused; that they stayed on the bridge for far longer than was proportionate; their choice to ignore the disruption and anger that would be caused to others; the fact that requests to come down were ignored, as were the risks to those who had to remove them from the bridge in the cherry picker. The protesters' motive was their concern about climate change but the action taken was totally disproportionate."

19. The court proceeded on the basis that the defendants' rights under Articles 10 and 11, whilst engaged, were significantly weakened on the facts:

> "74. The Article 10 and Article 11 protections, whilst not removed, were significantly weakened on the facts. As set out above, the s. 78(3) defence of "reasonable excuse", which incorporates Article 10 and Article 11 protections, was not available to the protesters. The protest was taking place on land from which the public were excluded. The further away from the core Article 10 and 11 rights a protester is, the less those rights merit an assessment of lower culpability or, putting it another way, a significant reduction in sentence (see *Kudrevicius* at [97]). In fact, by ascending the bridge, the protesters were committing a criminal offence under the Dartford-Thurrock Crossing Act 1988 (as set out above). This is relevant to an evaluation of whether the sentences were manifestly excessive and/or proportionate.
>
> 75. Further, the Article 10 and Article 11 protections were weakened by the fact that the disruption here was the central aim of the protesters' conduct, as opposed to a side-effect of the protest. Persuasion is very different from attempting (through physical obstruction or similar conduct) to compel others to act in a way a defendant desires. The distinction between protests which cause disruption as an inevitable side

effect and protests which are deliberately intended to cause disruption is an important one. (See *Cuadrilla* at [43] and [94].)

76. The judge was also entitled to conclude that the obstruction was significant: indeed, in this case it was of the utmost seriousness. It affected the Strategic Road Network, a network that was essential to the growth, wellbeing and balance of the nation's economy. We have referred to the protest's striking effects in statistical terms above, together with the evidence from affected individuals and businesses. Hundreds of thousands of members of the public were affected, some very significantly. In short, the protest resulted in enormous practical and personal disruption, alongside damage to businesses and the economy and a need for the deployment of significant police and Highways Agency resource and assistance."

20. The court addressed the judge's approach to the protesters' previous convictions and rehabilitation prospects as follows:

"58. … The judge did not ignore the prospect of rehabilitation; as recorded above, he referred expressly to it as "an important factor". But he concluded that there were no signs that the protesters were any less committed to the causes that they espoused, and referred to Mr Trowland's evidence in which he set out at length the beliefs that motivated him. The strength of the protesters' beliefs was on any view material to the question of rehabilitation. As was stated in *Roberts* at [47], when making a judgment about the risks of future offending, underlying motivations can be of great significance.

59. The judge was entitled to reject that the protesters' apologies were genuine and to take the view that they were inadequate and self-serving. The judge was concerned that they would continue to engage in their illegal activities despite their indications to the contrary. As he put it, "history indicate[d] that they were unreliable in that regard". They had been repeatedly released on bail and continued to offend. The fact that, in other domestic cases, undertakings by defendants not to offend have been accepted (see for example Roberts at [46] to [51] and McKechnie at [38]) is nothing to the point. This was pre-eminently a matter for the judge to assess...

77. As for mitigation, as already identified above, the judge was entitled to take the view that the protesters' apologies rang hollow and to harbour real concern that they would continue to engage in such protest activities as they though fit, despite their evidence to the contrary. The judge was aware of the protesters' personal histories. We do not consider that any significant weight falls to be attached to character references in the context of this type of offending, which is typically committed by those of otherwise good character. As set out above, albeit that it was a matter more properly addressed in the context of culpability, the judge also took account of their conscientious motives, affording 25% credit in this regard. This was not only fair, but arguably generous to the protesters in circumstances where there was no sense of proportion in their activities. They did nothing to avoid excessive damage or inconvenience: on the

> contrary, their conduct was designed to (and did) cause extreme damage and inconvenience."

21. Finally, it is relevant to note what was said in relation to deterrence as an aim of sentencing in these types of cases. The protesters relied on the observations made by Leggatt LJ in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29 *(Cuadrilla*) (in [98] and [99]), to the effect that, in general, there is reason to expect that less severe punishment is required to deter protesters from further law-breaking in comparison to other offenders. The court in *Trowland* commented:

> "66. These comments do not appear to us materially to advance the protesters' challenge. First, they are general in nature and always subordinate to the fact-sensitive exercise to be carried out in each case. Secondly, the direct aim of the protesters here was to cause maximum disruption (in order to deliver their message); a stand-out feature in this case is the lack of moderation on the part of the protesters. Thirdly, conscientious motivation/moral difference is already factored into the question of culpability, as identified above. Fourthly, as for deterrence, that is an area pre-eminently to be assessed on the facts, and in any event Leggatt LJ was addressing only deterrence to the offenders themselves, not the wider public, which may be a highly relevant consideration. Fifthly, whilst the social bargain or "dialogue" continued beyond the offending itself, the disproportionate nature of the protesters' actions remains highly relevant; and again the specific facts of each case, such as previous convictions and bail status, take precedence."

22. Secondly, in addressing the protesters' reliance on *R v Roberts* [2018] EWCA Crim 2739; [2019] 1 Cr App R (S) 48 (*Roberts*) and *R v Brown* [2022] EWCA Crim 6; [2022] 1 Cr App R 18 (*Brown*) the court stated:

> "86. As set out above, the offending in *Roberts* and *Brown* occurred in 2017 and 2019 respectively. A court's perception of the strength of the need for deterrence can change over time. Specifically, as is common knowledge, supporters of organisations such as Just Stop Oil have staged increasingly well-orchestrated, disruptive and damaging protests. It can be said that the principle of deterrence is of both particular relevance and importance in the context of a pressing social need to protect the public and to prevent social unrest arising from escalating illegal activity."

23. It is against the background of the principles stated and applied in *Trowland* that we address the issues which arise in these cases. Indeed, counsel for the appellants submitted that the principal basis for the proposed appeals is the appellants' contention that the sentencing judges did not properly apply the principles stated in *Trowland*, not that those principles were wrong. Considering that submission will primarily be a matter for reviewing the facts of, and the sentencing exercise conducted in, each case.

24. Nevertheless, it is helpful to address at this stage the parties' submissions on principle in relation to i) conscientious motivation; ii) Articles 10 and 11; iii) sentences in other public nuisance cases; and iv) the Aarhus Convention.

(2)(b) Conscientious Motivation

25. It is not disputed that each of the appellants was motivated to act as they did by a conscientious desire to communicate their views about the appropriate response to climate change issues. The appellants contend that the sentencing judge in each case erred because he declined to make any reduction in the sentences imposed on them by reason of their conscientious motivation. The interveners, Friends of the Earth Limited and Greenpeace Limited, support this contention. The Crown submits that in each case the sentencing judge referred to *Trowland* and correctly acknowledged that conscientious motivation may result in greater leniency in sentencing, but explained why he considered that that factor should be afforded no particular weight on the facts.

26. We will consider in due course the sentencing remarks in each case, but it can be said in general terms at this stage:

    i) The appellants' conscientious motivation was a factor relevant to sentencing in each case. It would have been an error for the sentencing judge to conclude on the facts that it had no part whatsoever to play in the sentencing exercise;

    ii) As stated in *Trowland* (at [55]), conscientious motivation fell most logically to be factored into the assessment of culpability. However, conscientious motivation did not preclude a finding that any appellant's culpability was still high (see *Trowland* at [50] and [72]);

    iii) Contrary to Mr Friedman's submission for the protesters, a sentencing judge is not obliged to specify an amount by which they have reduced a custodial term to reflect a defendant's conscientious motivation. As a general proposition, a sentencing judge is not obliged to attribute specific percentage values or figures to individual factors which have been taken into account in the sentencing exercise: see for example *R v Ratcliffe* [2024] EWCA Crim 1498 at [81]. That includes not only aggravating and mitigating factors, but also factors, such as conscientious motivation, going to the assessment of culpability. There is no parallel to be drawn with the approach to discounts for guilty pleas, for which a quantified reduction in sentence is made at a discrete stage in the sentencing process.

(2)(c) Articles 10 and 11

27. Article 10 provides as follows:

> "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."

28. We note that the appellants' message in these cases constituted "political speech", to which particular respect is afforded: it involved a call for a change in the law. There were ways in which the appellants could have communicated that message without trespassing and without committing a criminal offence. But the fact that they committed a trespass and a criminal offence in communicating that message did not mean that their activity ceased to be an expression of their views.

29. Article 11 provides as follows:

> "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."

30. As with other ECHR rights, the analysis of alleged violations of these rights generally follows five stages:

i) Does the right apply to the facts of the case? (This is often expressed by asking whether the right is "engaged" by the facts of the case.)

ii) Has there been an interference with the right?

iii) Was the interference "prescribed by law"?

iv) Did the interference pursue a legitimate aim?

v) Was the interference "necessary in a democratic society"? (This is usually expressed by asking whether the interference with the right was proportionate. In cases such as the present, the assessment of proportionality applies at each stage, i.e. prosecution, conviction and sentence.)

31. The appellants submitted that the sentences imposed constituted a disproportionate interference with their rights under Articles 10 and 11. The interveners supported this submission; the Crown opposed it. We address the proportionality of the sentences when we consider the individual cases, while noting the guidance in *Trowland* at [49], [74] and [75]. We deal here, however, with two preliminary issues which arise in connection with this ground of appeal and which concern the question whether Articles 10 and 11 apply at all on the facts of these cases.

32. Miss Ledward for the Crown submitted that Articles 10 and 11 are not engaged in a protest case if the protesters are trespassing (a contention not positively advanced in

Trowland). It was not disputed that the protesters who climbed gantries on the M25 were trespassing, since the public are not allowed access to the gantries. It was submitted that the legal position is less straightforward in the Thurrock Tunnels case, since the tunnels were underneath a public highway, but that the occupants of one of the tunnels had trespassed on railway property in order to access the tunnel. As for the Sunflowers case, it was said that the judge was right to conclude, as he did, that Articles 10 and 11 did not apply because the protest was violent or non-peaceful.

(2)(c)(i) Articles 10 and 11 and Trespass

33. There can be circumstances in which speech falls outside the protection afforded by Articles 10 and 11, such as those identified in Article 17 of the ECHR. However, Article 17 was not relied on in the present cases.

34. Articles 10 and 11 did not confer on the appellants a right of entry to private property: see *Appleby v United Kingdom* (2003) Application No. 44306/98. Moreover, disrupting traffic has been held not to be at the core of Articles 10 and 11: see *Kudrevičius v Lithuania* (2015) 62 E.H.R.R. 34, at 91. However, we were not referred to any case in which the European Court of Human Rights (the ECtHR) has decided that a protester who commits an act of trespass thereby automatically loses their rights under Article 10 or 11 altogether. On the contrary, *Steel v United Kingdom* (1998) 23 September was a case involving "a protest against the extension of a motorway involving a forcible entry into the construction site and climbing into the trees to be felled and onto machinery in order to impede the construction works" (see the description in *Taranenko v Russia* (2014) Application No. 19554/05 (*Taranenko*), at §70). The expression of opinion was found to be protected by Article 10.

35. We do not consider that *DPP v Cuciurean* [2022] EWHC 736 (Admin); [2022] QB 888 (*Cuciurean*) at [39] to [50] assists us on this point. *Cuciurean*, which involved a challenge to prosecution and conviction (not sentence) for aggravated trespass, contrary to s. 68 of the Criminal Justice and Public Order Act 1994, did not determine the question of whether Articles 10 and 11 were engaged.

36. Although the appellants' activities were not at the core of Articles 10 and 11, we do not consider that their acts of trespass removed them completely from the scope of Articles 10 and 11. Rather, as in *Trowland* (at [74] and [75]), the fact that the appellants' expressions of opinion involved criminal trespass significantly weakened the protections afforded by Articles 10 and 11 (and so the weight to be attached to those protections when considering proportionality of sentence).

(2)(c)(ii) The Applicability of Articles 10 and 11 in the Sunflowers Case

37. In the Sunflowers case, the judge gave a careful ruling during the course of trial in which he held that neither the conviction nor the sentencing of the appellants engaged any issue of proportionality. In his judgment, Articles 10 and 11 did not apply at all because i) the actions of Ms Plummer and Mx Holland were violent and not peaceful; and ii) they caused significant damage. He referred in particular to *Attorney General's Reference (No 1 of 2022)* [2022] EWCA Crim 1259; [2023] KB *37 (Colston)* at [120] and [121].

38. The judge was correct to state that Articles 10 and 11 were not engaged if Ms Plummer and Mx Holland's actions were violent/non-peaceful (see for example *Colston* at [115] and [120]); but he was wrong to hold that they were also not engaged if the damage was significant. *Colston* at [120] and [121] provides no support for such a conclusion: all that was being said in *Colston* was that the extent of damage was relevant to the proportionality of any conviction.

39. If, as we conclude below, this was not violent offending, the judge's error was material.

40. *Colston* confirmed that "[v]iolence is not confined to assaults on the person but may include damage to property" (see [87]). For example, criminal damage might be appropriately deemed "violent" if it intimidates onlookers. *Colston* concerned the prosecution for criminal damage of protesters who pulled down a statue and threw it into a harbour.

41. For present purposes, the case of *Murat Vural v Turkey* (2014) Application No. 9540/07 provides the most useful comparison. There the applicant poured paint on five public statutes of Kemal Atatűrk. The ECtHR held that Article 10 was engaged by the applicant's actions. In the same way, we consider that Ms Plummer and Mx Holland's actions engaged Articles 10 and 11. While shocking, their actions were not violent.

42. For these reasons, Articles 10 and 11 were engaged on the facts of the Sunflowers case (albeit significantly weakened).

(2)(d) Sentences in Other Public Nuisance Cases

43. The appellants in the M25 Conspiracy, M25 Gantry Climbers and Thurrock Tunnels cases submitted that the sentencing judge in each case failed to have proper regard to relevant caselaw on sentencing for public nuisance. The appellants referred in particular in this context to:

    i) *R v Chee Kew Ong* [2001] 1 CrAppR (S) 117, in which the defendant committed the offence of conspiracy to cause a public nuisance when he extinguished the floodlights at a Premier League football match, causing the match to be abandoned, for the benefit of individuals who had placed bets on the match abroad.

    ii) *R v Cleator* [2016] EWCA Crim 1361, in which the drunken defendant committed the common law offence of causing a public nuisance by climbing onto and remaining on a structure over the M56 motorway near Manchester.

    iii) *Roberts*, in which the defendant protesters committed the common law offence of causing a public nuisance by climbing on top of lorries and blocking the A583 near Blackpool.

    iv) *Brown*, in which the defendant committed the offence of aggravated trespass, contrary to s. 68 of the Criminal Justice and Public Order Act 1994, by climbing on top of and gluing himself to an aeroplane at London City Airport.

    They also referred to the Sentencing Council Guideline for Offences of Violent Disorder.

44. The Crown submitted that the sentencing judges each had proper regard to what was the only case on sentencing for the new offence created by s. 78(1), namely *Trowland*.

45. The submissions made by the appellants and the interveners address the issue of the relationship between the new statutory offence under s. 78(1) and the common law offence abolished by s. 78(6) of the 2022 Act. In this regard, we see no reason to depart from what was said in *Trowland* (at [46], [47], [78], [79] and [83] to [86]). Each case must, of course, be decided on its own facts, but, insofar as comparisons with sentences in other cases are relevant at all (as to which see paragraph 7(iv) above), sentencing judges in cases such as the present are more likely to be assisted by decisions on the new statutory offence than by decisions on other offences.

46. Particular reference is made in this context to the issue of deterrence. Again, we see no reason to expand on what was said on this issue in *Trowland,* including in relation to *Roberts* and *Brown* (see [66], [83] and [86]). (It can of course also be noted that the sentences imposed in cases decided before *Trowland* did not in fact deter these appellants from committing the offences of which they were convicted. As Mr Friedman volunteered, the appellants expected to go to prison for at least a while. The prospect of short immediate custodial sentences was self-evidently not a sufficient deterrent.)

(2)(e) The Aarhus Convention

47. The appellants submitted that the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) is relevant both as an aid to interpreting ECHR rights and as something to be taken into account by a judge in exercising a discretion, as judges do in determining the appropriate sentence in a particular case. On that basis, the appellants submitted that the Aarhus Convention, in particular article 3(8), supplements their other grounds of appeal. In addition, the appellants submitted that the sentencing judges should have had regard to the views of the UN Special Rapporteur on Environmental Defenders (the UN Special Rapporteur), who had criticised the decision in *Trowland.* However, Mr Friedman confirmed that it was not the appellants' case that the Aarhus Convention added anything to the other grounds of appeal, rather than simply supporting them.

48. The Crown submitted that the Aarhus Convention did not apply to the activities of the appellants in the present cases and that it would not have been appropriate for the sentencing judges to take account of or to afford any weight to expressions of opinion by the UN Special Rapporteur.

49. In our judgment, it would not have been appropriate for the sentencing judges to have had regard to the Aarhus Convention or the views of the UN Special Rapporteur. The Aarhus Convention is not incorporated into English law. That is sufficient, in itself, to decide the point. However, we also agree with the Crown's submission that article 3(8) of the Aarhus Convention did not apply to the appellants' activities. Article 3(8) provides as follows:

> "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed

> in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings."

50. The appellants in these cases were penalised, but they were not penalised for "exercising their rights in conformity with the provisions of" the Aarhus Convention. They were penalised for committing criminal offences. It is, rightly, not suggested that their prosecution or conviction was contrary to the Aarhus Convention. Neither was their sentencing.

51. We turn now to the particulars of the sentencing exercises in each of the four cases in the order in which the arguments were presented to us. For the avoidance of doubt, in each case, we have considered the question of proportionality independently and our conclusions produce a result in each case which we judge to be proportionate (in line with the approach outlined in *Trowland* at [88]).

(3) The M25 Conspiracy Case

(3)(a) The Judge's Ruling and Sentencing Remarks in the M25 Conspiracy Case

52. All the appellants in the M25 Conspiracy case were convicted on 11 July 2024 after a four-week trial before HHJ Hehir and a jury. They were sentenced on 18 July 2024 by the trial judge.

(3)(a)(i) Trial ruling

53. In the course of the trial, on 8 July 2024 HHJ Hehir gave a ruling on whether certain proposed defences were available to the defendants. On 11 July 2024 he gave his written reasons for deciding that they were not. One of the proposed defences was that conviction would be a disproportionate interference with the defendants' rights under Articles 10 and 11. We emphasise that the judge was ruling on this as a potential defence against conviction, rather than as a potential consideration at the sentencing stage. He held that Articles 10 and 11 were not engaged, because:

> "…those who climbed the gantries in furtherance of the conspiracy alleged did so as lawbreakers and trespassers. Article 10 of the ECHR confers no licence to trespass on somebody else's property in order to express one's views: see *Richardson v DPP* [2014] UKSC 8 per Lord Hughes at para 3. It must follow that neither can Article 11 confer such licence."

54. In the alternative, the judge ruled that conviction would not be a disproportionate interference with the defendants' Article 10 and 11 rights, even if those articles were engaged. He said:

> "…the conspiracy alleged against the defendants contemplated the most substantial disruption to traffic on London's orbital motorway. The Zoom call reveals the expression of the hope by Roger Hallam (and not dissented from by any other defendant) that the planned disruption would lead to total gridlock of the motorway system and other major roads. Such gridlock could have had catastrophic effects had it eventuated, by reference for example to food supplies and the maintenance of law and order. Although there was no total gridlock, very substantial disruption did occur.

> What occurred, and what was contemplated, was conduct of the sort identified by the European Court of Human Rights in *Kudrevicius v Lithuania* 62 EHRR 34 as falling outside the "core" of ECHR rights. In those circumstances, disproportionality is inherently unlikely."

55. The fact that this proportionality exercise had been conducted in relation to the prosecution of the offences did not, in itself, mean that proportionality did not also fall to be considered at the point where a sentence was to be passed. The proportionality of any interference with ECHR rights may be particularly relevant at the sentencing stage, even though the ECHR rights in question do not provide a defence to the charge: see *Roberts* at [34]; *Cuadrilla* at [87]; the consideration of *Taranenko* in *Colston* at [90]; and *Trowland* at [87-88].

(3)(a)(ii) Sentencing Remarks

56. In his sentencing remarks, the judge described the conspiracy as "a sophisticated plan to disrupt traffic on the M25 motorway by means of protestors climbing up the gantries over the motorway".

57. He noted the impact of the conspiracy as "disruption on the M25 for four successive days, from 7 November to 10 November 2022." Over 45 protestors climbed gantries at various points on the M25. "Every sector of this orbital motorway was affected". There was "massive disruption". Large sections of the M25 had to be closed each day, causing long tailbacks. Six police forces were involved and the estimated cost of the involvement of the Metropolitan Police alone was over £1 million. The total road impact time over the four days was 121 hours and 45 minutes. The total extent of the delay to road users was calculated at 50,856 hours. The number of affected vehicles was calculated at 708,523. The total economic cost of the four days of disruption was put at £769,966.

58. He referred to evidence from some of those affected, including (for example) people who had missed funerals.

59. The judge found that the appellants had intended, although they had failed to achieve, gridlock. He quoted the appellant Roger Hallam telling a meeting on Zoom on 2 November 2022, a few days before the protest (attended by all of his co-defendants):

> "A really, like, super-significant aspect of this project, which takes it away from anything that has happened before. And that's that it has the potential to create gridlock. In other words, if we take a section of motorway, a circular motorway, people block gantries at close equidistant spaces around that circle, at a certain time of the day, the whole motorway will fill up with cars, and then no one will be able to get on to that motorway, and it will back up on all the other motorways and all the other A-roads. In other words, it will cause a hundred times more disruption than simply two or three people doing it, right. And there's a whole mathematics around it."

60. The judge said:

> "The M25 intersects with no fewer than nine other motorways over its circular course, with the M40, the M1, the A1(M), the M11, the M20, the M26, the M23,

> the M3, and the M4. It also intersects with a number of major A-roads, into and out of London. In addition, four of London's airports, Heathrow, Gatwick, Luton, and Stanstead, lie close to the M25 with many of those travelling through or working at those airports using the M25 to get to and from them.
> Had the gridlock for which all five of you devoutly hoped come to pass, the consequences would have been catastrophic. Mass road disruption in London and southern England would have had major implications for food supplies and the maintenance of law and order, among other things.
> (…)
> Section 63 of the Sentencing Code requires me, in assessing the seriousness of your offending, to have regard not only to the harm you actually caused, but also the harm you intended to cause."

61. The judge recognised (see *Trowland* at [49]) that it was not his task to comment on the merits of the Just Stop Oil cause, but he said:

> "I think I can fairly observe that there is a general consensus, in both scientific and societal terms, that man-made climate change exists, and that action is required to mitigate its effects and risks. (…) I acknowledge that at least some of the concerns motivating you are, at least to some extent, shared by many."

62. The judge identified as aggravating factors for all appellants: (i) the very high level of disruption caused to the public; (ii) the even higher level of disruption intended; (iii) the harm risked from traffic accidents, to members of the emergency services bringing climbers down from gantries and to the climbers themselves; (iv) breach of an injunction granted by the High Court of which all the appellants were aware, since the injunction was referred to on the Zoom call; (v) previous convictions of one or more offences in relation to direct-action protest; and (vi) each of the appellants being on bail in respect of at least one other set of proceedings when committing this offence.

63. Turning to the appellants' conscientious motivation, the judge said:

> "I do not regard your status as non-violent, direct-action protestors as affording you any particular mitigation.
> (…)
> While there will be cases where the conscientious motives of protestors may permit a degree of leniency from this court, this is not one of them."

64. He cited *Trowland* at [50] ("the more disproportionate or extreme the action taken by the protestor, the less obvious is the justification for reduced culpability and more lenient sentencing") and said:

> "Yours is not an appropriate case for leniency. This was a conspiracy to cause extreme and disproportionate disruption."

65. He referred to all of the appellants (except Lucia Whittaker de Abreu) using the trial to conduct what he described as "a calculated campaign to disrupt the proceedings", although he said that he would not sentence them for their conduct during the trial. He said in relation to all of the appellants that:

> "…there is a real risk of each of you committing further serious offences in pursuit of your objectives, unless you are deterred from doing so by exemplary sentences in this case. Such sentences will hopefully also deter others who share your outlook from doing what you did."

66. He then turned to the sentencing of each appellant individually.

(3)(a)(iii) Roger Hallam

67. The judge described Mr Hallam (aged 58 at the date of offending) as "a highly influential figure within Just Stop Oil" and, in relation to the M25 Conspiracy case, "the theoretician, the ideas man", who used the Zoom call "to inspire the troops and would-be troops", but also as "intimately involved in the practice". He "sat at the very highest level" of the conspiracy. He obtained the mathematical model for motorway disruption and he supervised its implementation.

68. He had relevant previous convictions, including 11 between 2017 and 2024, most recently for conspiracy to cause a public nuisance by disrupting Heathrow Airport operations with drones, for which he had received a suspended prison sentence which was still in force.

69. The judge found that there was no real personal mitigation, positive character references notwithstanding. Mr Hallam's claim to have changed his attitude was rejected, in part because of his conduct at the trial, when he and three other appellants "set about turning the proceedings themselves into a direct action protest".

70. His sentence of five years' imprisonment after a trial reflected the judge's conclusion that he was "at the very top of the tree so far as the conspiracy is concerned."

(3)(a)(iv) Daniel Shaw

71. The judge described Daniel Shaw (aged 36 at the date of offending) as "up to your neck in the organisation of this conspiracy" and, in particular, the recruitment and training of protestors.

72. He had one previous conviction for causing a public nuisance, committed in 2021 and sentenced with a community order in 2023 which was still in force.

73. The judge particularly mentioned the personal mitigation afforded by Mr Shaw's caring responsibilities. However, the judge said "your conduct during the trial deprives you of any mitigation based on the potential for rehabilitation".

(3)(a)(v) Lucia Whittaker de Abreu, Louise Lancaster and Cressida Gethin

74. The judge described each of Lucia Whittaker de Abreu, Louise Lancaster and Cressida Gethin as "a key organiser", because of their roles as speakers at the Zoom meeting chaired by Mr Shaw and principally addressed by Mr Hallam. He described the role of each of these three as to inspire would-be climbers of the gantries by describing their own previous experience of similar direct-action protest. What each of them said showed that they were familiar with the detail of what was planned and their enthusiasm for it.

75. They also did individual acts in furtherance of the conspiracy. Ms Lancaster rented safe-house accommodation in London for gantry climbers. She also bought "a considerable amount of specialist equipment" for them. Ms Whittaker de Abreu and Ms Gethin were arrested when dressed and equipped to climb gantries themselves.

76. Ms Whittaker de Abreu (who was 33 at the date of offending) had three previous convictions for obstruction offences during direct-action protest. These had resulted in fines. In mitigation, the judge noted her health and caring responsibilities, but decided "that provides little by way of mitigation, given your conscious choice to engage in offending of this seriousness".

77. Ms Lancaster (who was 57 at the date of offending) had six previous convictions for offences committed during direct-action protest. The two most recent were a conviction in June 2023 for which she received a five-week prison sentence and a conviction in November 2023 for which the sentence was a suspended sentence of imprisonment. Her offence in the M25 Conspiracy was committed in breach of a suspended committal order imposed by the High Court for breach of a High Court injunction by climbing an M25 gantry on a previous occasion (July 2022, shortly before the M25 Conspiracy acts in November 2022) which she herself referred to in the Zoom call. There was no personal mitigation.

78. Ms Gethin (who was 20 at the date of offending) had three previous convictions for offences committed during direct-action protest. The most recent (for a substantive offence of public nuisance in relation to protest disruption on the M25) had resulted in a suspended sentence in February 2024. Her conviction also placed her in breach of a conditional discharge imposed in September 2022. In mitigation, the judge considered character references and material in respect of her health. He was satisfied that the health issues could be managed in prison. He referred to her young age (saying that she was "by far, the youngest of the defendants"). However, he did not regard it as providing any mitigation or justifying any treatment different from her co-defendants. He explained:

> "As the character evidence indicates, and as I learned for myself during the trial, you are an intelligent and well-educated young woman. Neither immaturity nor personal disadvantage has driven you to crime; your own conscious choices have."

79. The judge passed a sentence of four years' imprisonment on all four of the M25 Conspiracy appellants except Mr Hallam, stating that there were no grounds for differentiating between the four, notwithstanding various differences in their personal circumstances and antecedents.

(3)(b) General Issues in the M25 Conspiracy Case

80. In the M25 Conspiracy case, as in *Trowland*, disruption was the central aim of the appellants' conduct, as opposed to a mere side-effect of it. Moreover, Mr Hallam said explicitly in the Zoom call that the aim of the conspiracy was not merely to persuade (for example, by obtaining publicity for Just Stop Oil's arguments) but to compel. The aim was to achieve: "such massive economic disruption that the Government cannot ignore the demand"; and "sufficient mass disruption to force this Country to face its responsibilities and force this Government to respond to the illegality and immorality

of what it is engaging in". The emphasis was on the word "force", a word which Mr Hallam used twice in these quotations. The protest was peaceful only in the sense that it was non-violent. It was intended, however, to be on such a scale as to be coercive. As was said in *Trowland* at [75], "Persuasion is very different from attempting (through physical obstruction or similar conduct) to compel others to act in a way a defendant desires".

81. However, we read the judge's sentencing remarks as meaning that he took no account at all of the appellants' conscientious motivation. Whilst he was right that conscientious motivation is not a matter of mitigation, it is a factor which may reduce culpability (see *Trowland* at [55]). As was said in *Trowland* at [50], "the more disproportionate or extreme the action taken by the protester, the less obvious is the justification for reduced culpability and more lenient sentencing". However, this is, save in a most exceptional and extreme case, a matter of degree, rather than excluding consideration of conscientious motivation altogether. Even in the very serious case of *Trowland*, culpability was reduced materially by the presence of conscientious motivation. The weight to be given to this factor is for the judge to assess on the facts of every case.

82. The judge did not consider, at the sentencing stage, the effect of Articles 10 and 11. As previously explained, we consider that these articles were engaged in the M25 Conspiracy case. When ECHR rights are engaged, the proportionality question must always be asked. However, as we have already said (at paragraph 7(iii) above), if the common law principles set out in *Trowland* are applied properly, the defendant's ECHR rights should be observed.

83. The appellants in the M25 Conspiracy and M25 Gantry Climbers cases argued that there was a disparity between their sentences and those imposed on others involved in the same protest. We were presented with a table of all of those sentenced in relation to offences of public nuisance arising from the M25 Conspiracy, including seven individuals who are not parties to this appeal. The table stated their names, dates of birth, offence dates, sentence dates, whether the offence was charged as a conspiracy or the substantive offence, credit for plea (when relevant), sentence and the approximate sentence before credit for plea. It included no other details. The sentences ranged from a community order imposed on one of those not appealing to this court to the five years' imprisonment imposed on Mr Hallam.

84. Arguments based on disparity are always difficult, as was acknowledged by counsel. In cases which are so highly fact sensitive as these, both as to the nature of the offending and as to the personal involvement and personal circumstances of the offenders (see *Trowland* at [51]), there is little to be gained from the limited information provided.

(3)(c) The M25 Conspiracy Case: Roger Hallam

85. The sentencing judge was entirely justified in taking the serious view of Mr Hallam's offending that he did. We recognise that the judge was particularly well-placed, after a trial, to assess the overall seriousness of the offending. However, we consider a sentence of five years' imprisonment in Mr Hallam's case to be manifestly excessive.

86. The sentences upheld, after a trial, in *Trowland* were three years' imprisonment (Mr Trowland) and two years and seven months' imprisonment (Mr Decker). These were said to be severe, but not manifestly excessive (see *Trowland* at [91]). Mr Hallam's

case was worse. The intended effect was worse. The period of disruption was longer, spanning over four days, all in accordance with (although falling short of) the intentions of this sophisticated conspiracy. However, in this case, as in all cases, it is necessary to pass the shortest possible sentence commensurate with the seriousness of the offence (s. 231(2) of the Sentencing Act 2020). Deterrence was a particularly important factor in Mr Hallam's case, because he had eleven relevant previous convictions at the date of the conspiracy in 2022. By the date of sentence he had also been convicted of a further offence for which he had received a suspended sentence in 2024. Nevertheless, this was his first sentence of immediate custody. It is also necessary to avoid sentence inflation.

87. We take account of all of the matters considered by the judge when passing sentence and we also recognise that some attention must be paid to conscientious motivation and Articles 10 and 11, although much less than would have been the case had the offending been less disproportionate. We consider that the shortest term commensurate with the seriousness of the offence in the case of Mr Hallam was one of four years' imprisonment, not five.

(3)(d) The M25 Conspiracy Case: Daniel Shaw

88. No particular argument was addressed to us in respect of Mr Shaw which did not apply equally to Mr Hallam. Mr Shaw, like Mr Hallam, was entitled to have his culpability considered in the light of his conscientious motivation and to have a final assessment made as to whether the sentence to be passed on him was proportionate to any interference with his ECHR rights. The sentence also had to be the shortest sentence commensurate with the seriousness of the offence.

89. The judge considered that Mr Shaw's sentence should be four years' imprisonment, which was one year shorter than the sentence originally passed on Mr Hallam. It follows, from our reduction of Mr Hallam's sentence from five years' to four years' imprisonment, that Mr Shaw's sentence should not have exceeded three years' imprisonment, which maintains the differential between him and Mr Hallam. We see no reason for any further reduction.

(3)(e) The M25 Conspiracy Case: Lucia Whittaker de Abreu

90. Ms Whittaker de Abreu is entitled to the benefit of the points already discussed above.

91. It was, in addition, submitted that the judge had failed properly to take into account her caring responsibilities. However, he expressly referred to them, saying "I bear in mind what I have seen and heard about your health and your caring responsibilities, but that provides little by way of mitigation, given you[r] conscious choice to engage in offending of this seriousness". We are not persuaded, either by the evidence of these matters put before the judge or by an additional statement from her mother (whose initial statement was before the sentencing judge), that a further reduction in her sentence was required on that account. The seriousness of the offence made an immediate custodial sentence inevitable and Ms Whittaker de Abreu's caring responsibilities were not such as materially to affect the appropriate length of the sentence.

92. It was submitted that the trial judge wrongly evaluated Ms Whittaker de Abreu's risk of reoffending. The judge was of course well-placed after trial to assess Ms Whittaker de Abreu's risk of reoffending. He referred to the fact that she had not disrupted the trial, as had her co-defendants, but considered that this made no difference to the appropriate sentence. He made no mention of the fact that she had not reoffended or been convicted of any further matters since November 2022, again a point of distinction to be made between Ms Whittaker de Abreu and Ms Lancaster, Mr Hallam and Ms Gethin.

93. We consider that a sentence of four years' imprisonment for Ms Whittaker de Abreu was manifestly excessive and that the appropriate sentence in her case is is 30 months' imprisonment. This reflects the parity found by the judge between her sentence and that of Mr Shaw but makes additional adjustment downwards to reflect the additional mitigation in her favour as referred to above.

(3)(f) The M25 Conspiracy Case: Louise Lancaster

94. No specific personal mitigation was advanced before us in respect of Ms Lancaster. The arguments already considered in relation to other appellants apply also to her. For the same reasons, her sentence will be reduced from four years' imprisonment to three years' imprisonment.

(3)(g) The M25 Conspiracy Case: Cressida Gethin

95. The sentencing judge did not distinguish between Ms Gethin's sentence and the sentences passed on Mr Shaw, Ms Whittaker de Abreu, and Ms Lancaster.

96. A striking difference between her and her co-defendants was her age. She was only 20 years old at the date of the conspiracy offence in late 2022. At the time of the conspiracy offence in 2022, she had only been convicted of one previous matter, an aggravated trespass committed earlier in the same year.

97. The judge acknowledged her age, but said it did not provide any mitigation or entitle her to a shorter sentence than the sentences passed on Mr Shaw, Ms Whittaker de Abreu or Ms Lancaster. He assessed her as "highly intelligent and well-educated" and said that neither immaturity nor personal disadvantage had, as he put it, driven her to crime.

98. The question was whether Ms Gethin's age supported a submission that she lacked maturity, which in turn reduced her culpability. Intelligence and educational attainment are not the same as maturity. Consideration of the possible relevance of immaturity is necessary even in the case of a young adult who has passed the age at which the Guideline on Sentencing Children and Young People applies. As was stated in *Clarke* [2018] 1 Cr. App. R. (S.) 52; [2018] EWCA Crim 185 at [5]:

> "Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in *R. v Peters* [2005] EWCA Crim 605; [2005] 2 Cr. App. R. (S.) 101 (p.627) is an example of its application: see [10]–[12]. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. The Age of Adolescence: thelancet.com/child-adolescent; 17 January 2018) is that young

> people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday."

99. We accept the submission that Ms Gethin's immaturity lowered her culpability and that her sentence should be lower than that of her co-defendants accordingly. We reduce her sentence from four years to 30 months' imprisonment.

(4) The M25 Gantry Climbers Case

(4)(a) The Judge's Sentencing Remarks in the M25 Gantry Climbers Case

100. All the appellants in the M25 Gantry Climbers case pleaded guilty as their trial was about to begin. A jury had been empanelled. They were sentenced by HHJ Collery KC on 1 August 2024. Daniel Johnson was sentenced at the same time as the appellants but he has not applied for leave to appeal against his sentence. The judge said that Mr Johnson "led the defendants in their change of pleas and others followed his lead". He gave a 10% reduction in sentence to each defendant as credit for plea and there is no challenge to that.

101. In his sentencing remarks, the judge said that the M25 had been chosen specifically because it is one of the most important parts of the strategic road network and action upon it was likely to cause maximum disruption.

102. The M25 gantry climbers had travelled long distances to take part in the disruption. Between them, they climbed six gantries over the M25 in a broad swathe from St Albans to Sevenoaks. Each had been trained to climb the gantries. Each had been equipped with climbing equipment. Many of them (but not Gaie Delap and Paul Sousek) brought locks and glue to delay their removal. The purpose of climbing the gantries was to delay their removal from the road and thereby prolong the period of road closure and increase the disruption. The purpose of the disruption was so that Just Stop Oil might benefit from media coverage, but the nuisance caused was intended, and not merely a by-product of the disruption.

103. The climbers were acting together and were sentenced on that basis. However, unlike the M25 conspirators led by Mr Hallam, the M25 gantry climbers were "the willing volunteers" rather than "the organisers".

104. The judge noted that there was no guideline for sentencing offences of intentionally causing a public nuisance under s. 78(1). However, he referred to *Trowland*, to the guidelines on overarching principles and on imposition of community and custodial sentences and to the purposes of sentencing in s. 57 of the Sentencing Act 2020.

105. He found both individual and collective culpability to be high. There was sophisticated planning. The actions of the M25 gantry climbers were part of a wider action. The intention was to be part of a co-ordinated effort. Every defendant took steps to make it harder for them to be brought down and so to prolong the disruption.

106. The harm intended and achieved on 9 November 2022 was mass disruption for several hours. 117,000 vehicles were impacted. There were 8,936 hours of vehicle delays,

ranging from minutes in some cases to hours in others. Police costs for the Metropolitan Police alone were in excess of £227,000 and involved 44 shifts.

107. The judge considered the appellants' conscientious motivation and said this:

> "The court accepts, of course, that a conscientious motive may be a relevant consideration, particularly where, otherwise, the offender is a law-abiding person. You committed offences simply by being on the motorway. You actions were, in the view of this court, disproportionate to your aims. I do not regard your status as non-violent protesters to afford you any particular mitigation. The very purpose of section 78 was to address the increase in non-violent protest offending. In *Trowland and Decker* [Lady] Justice Carr said, at paragraph 50:
>
> > "However, the more disproportionate or extreme the action taken by the protester, the less obvious is the justification for reduced culpability and the more lenient sentencing."
>
> In my view, because the actions of these protesters was disproportionate – and deliberately intended to be so – consequently the moral difference between your behaviours and that of ordinary law breakers is much reduced."

108. Considering the cases overall, the judge said:

> "I take the view that, in relation to each of you, the custody threshold has been passed, that in none of your cases is the objective of deterrence achieved by the imposition of a community sentence. Such anti-social mass disruption is deserving of punishment. The sentences I pass are the least possible in the circumstances.
> (…)
> I had in mind, when considering these offences, a period of 27 months imprisonment, marginally more for some given the various aggravating factors. That then has to be adjusted to reflect the various mitigating factors in each of your cases."

(4)(a)(i) Gaie Delap

109. Sentencing Ms Delap (aged 75 at the time of offending), the judge said that she had no previous convictions, but one conditional caution in 2020 for wilful obstruction of the highway. He treated as an aggravating factor her being on bail for another protest matter when committing the current offence. He noted that she was the oldest of the defendants, but said, "age, I regret, has not brought wisdom".

110. He accepted her conscientious motivation. He rejected her expressions of regret for the disruption caused as implausible. He accepted her life of service to others before and after retirement as a teacher and some personal health and family caring responsibilities, albeit at a relatively low level.

111. She had been made subject to a qualifying curfew from 10 November 2022 but the tag could not be fitted and that requirement was removed on 8 December. He certified that 14 days were to count towards her sentence, namely half of 28 days.

112. He reduced the sentence to reflect her personal mitigation and general health. With 10% credit for plea, her sentence was 20 months' imprisonment, reduced by 14 days in respect of the time which she had spent on qualifying curfew.

(4)(a)(ii) Paul Sousek

113. Sentencing Mr Sousek (aged 71 at the time of offending), the judge noted his history of protest and his desire to cause public nuisance and large-scale disruption to increase the chance of news coverage. There was no remorse and no intention of changing his behaviour, save to stop short of the point of arrest. He was closer to the centre of the actions than other defendants. The judge said, "you are old enough to know better but do not". He had been the most recalcitrant at court hearings. He also had health issues.

114. He had three previous convictions, two of great age and no obvious relevance. One, however, was in 2022 for protest-related public nuisance, punished by a fine.

115. The judge reduced the sentence for personal mitigation, namely, Mr Sousek's age and state of health. After 10% credit for plea, his sentence was 20 months' imprisonment, with 86 days from the tagged curfew to count towards that.

(4)(a)(iii) Theresa Higginson

116. Sentencing Theresa Higginson (aged 24 at the time of offending), the judge noted one previous conviction for aggravated trespass in 2023 for which she had received a 6 month conditional discharge. The judge understood her to have been on bail for that at the time of the current offence. He said she was, in fact, on bail for two protest-related offences at the time of the current offending, which was an aggravating feature.

117. She was unrepentant and assessed in the pre-sentence report as highly likely to reoffend. She was intellectually able and had choices and opportunities not available to others. There was no significant personal mitigation.

118. Her sentence, after 10% credit for plea, was 24 months' imprisonment. Half of the time spent on qualifying curfew counted towards that.

(4)(a)(iv) Paul Bell

119. Sentencing Paul Bell (aged 22 at the time of offending), the judge noted he had no previous convictions. This was treated as a mitigating feature, reducing the sentence. However, he was on court bail at the time of sentence for two protest-related matters for which he was still awaiting trial, which the judge treated as an aggravating feature.

120. He had an academic career, but had prioritised his Just Stop Oil activity, including the offending, over that.

121. After 10% credit for pleading guilty, he was sentenced to 22 months' imprisonment. The judge gave 78 days' credit for a qualifying curfew.

(4)(a)(v) George Simonson

122. Sentencing George Simonson (aged 22 at the time of offending), the judge noted his conscientious motivation. He rejected the submission that Mr Simonson's attitude to

offending had changed and pointed to his two arrests and convictions after the offence in question. He noted a suggestion, although short of a diagnosis, of possible ADHD or autism. Mr Simonson was described as an intelligent, thoughtful and considerate young man.

123. He had three recent and relevant previous convictions for public order and highway obstruction offences, two dealt with by a fine and one resulting in a 12-month conditional discharge. He was on bail for that at the time of offending.

124. After 10% credit for pleading guilty, his sentence was 24 months' imprisonment.

(4)(b) General Issues in the M25 Gantry Climbers Case

125. We apply the principles identified above. It is clear that the judge both recognised and took into account in the case of each defendant their conscientious motivation. He was correct to do so. We are not persuaded that any of the sentences are manifestly excessive in that respect or that the engagement of Article 10 and 11 rights, although not specifically mentioned by the judge, called for more lenient sentencing than was already afforded by the judge's recognition of the appellants' conscientious motivation when passing sentence. The offending was serious and out of all proportion with what was necessary for the exercise of Article 10 or Article 11 rights. Both culpability and harm were, on the judge's findings, significant. The balance of factors in the Imposition Guideline made immediate custody appropriate. There was a history of poor compliance with court orders, a risk of reoffending, a limited impact on others, an absence of strong personal mitigation and, in particular, the necessity of appropriate punishment.

126. It was submitted that the suspended sentence of 21 months' imprisonment imposed on the appellants' co-defendant, Mr Johnson, created a disparity with the appellants' sentences which was not justified. In particular, it was submitted that the judge wrongly emphasised Mr Johnson's disavowal of Just Stop Oil and, thereby, wrongly penalised the appellants for continuing their commitment to the environmental cause of Just Stop Oil and those aspects of its work which are not illegal.

127. The judge's sentencing remarks about Mr Johnson, however, clearly demonstrated why it was legitimate to suspend Mr Johnson's sentence. He was 25 years old and had no previous convictions. He was under investigation, but not on bail for any matters, and the matters under investigation resulted in no action. His involvement with Just Stop Oil was very brief, covering only the period from October to November 2022. He had shown genuine remorse, which was noted in his pre-sentence report and accepted by the judge. He had also disassociated from Just Stop Oil and severed those ties. His engagement with the criminal justice system had already served to deter him from further offending and he intended to pursue post-graduate studies towards a profession (as a psychoanalyst), as to which he had an academic reference in support. In relation to the Imposition Guideline factors, therefore, there was no history of poor compliance with court orders, he presented no risk to the public, there were very strong prospects of rehabilitation and he had personal mitigation in the form of his career prospects, which would be blighted if he went to prison instead of continuing his studies. The offending remained serious, which meant that the custody threshold was crossed, but his position was very different in multiple respects from that of the appellants. This makes the disparity argument unsustainable.

128. We do not think that it is a fair reading of the sentencing remarks to say that the appellants were penalised for continuing their conscientious commitment to Just Stop Oil. Rather, the focus of the judge's remarks was on Mr Johnson's genuine remorse and his decision not to re-offend and, in the case of the appellants, on their lack of genuine remorse and their risk of re-offending. That was a legitimate judgment to make in respect of the appellants and one which was open to the judge on the materials which he had before him and for the reasons which he gave. He said, in terms, that the continued commitment of the appellants to their cause "is, of course, in itself unobjectionable".

(4)(c) The M25 Gantry Climbers Case: Gaie Delap

129. In relation to Ms Delap, passages in the Pre-Sentence Report were highlighted in which she said that she understood that she must stay within the law in any future involvement with Just Stop Oil. However, the judge was not bound to accept that self-serving assurance and he pointed to reasons, based on the facts of her offending, which made her account of her offending and of her intentions implausible.

130. It was pointed out that the judge was told incorrectly that she was on bail when committing the current offence. In fact, she had been released under investigation for gluing herself to a road. Taking the matters referred to by the judge in reaching his sentence as a whole, and having regard to the final sentence, we do not regard that difference as material. Her sentence of 20 months' imprisonment was lower than the sentence on any of the other appellants, except Mr Sousek, whose sentence was the same. He too was not in breach of bail or of any orders when offending.

131. The judge took Ms Delap's age and other personal mitigation into account, as well as her conscientious motivation. We do not consider the sentence of 20 months' imprisonment to be manifestly excessive or wrong in principle.

132. However, it seems that the judge was not given full or correct information about Ms Delap's curfew. He certified that 14 days counted towards her sentence on account of a short period of time spent on qualifying curfew. However, her qualifying curfew ended because she suffered from a medical condition, which made it necessary to remove the tag for health reasons. Thereafter, although not tagged, she continued to be under a curfew from 7 pm to 7 am for a further 145 days.

133. Our attention was drawn to *R v Whitehouse* [2019] EWCA Crim 970; [2019] CRAppR (S) 48 at [16] to [19] and we drew the parties' attention to *R v Nwankwo* [2024] EWCA Crim 1375 at [19] to [20]. The fact that Ms Delap was subject to onerous bail conditions for so long was something which should have been taken into account when she was sentenced. This issue was not raised in the original grounds of appeal, but, when raised during the hearing, the Crown accepted that account should have been taken of this period of curfew. We accept that, on the facts of her case, it is appropriate to give her some credit for the onerous bail conditions to which she was subject. The position is different in relation to the shorter curfew (from midnight to 7 am) which applied thereafter.

134. We consider that the appropriate adjustment to the sentence is two months. Ms Delap's sentence will be reduced from 20 months' to 18 months' imprisonment accordingly.

(4)(d) The M25 Gantry Climbers Case: Paul Sousek

135. In addition to the points already considered, it was submitted on behalf of Mr Sousek that the judge failed to have sufficient regard to his age and state of health. However, the judge specifically referred to these factors when reaching his decision on sentence. We are not persuaded that the sentence of 20 months' imprisonment after credit for plea was manifestly excessive or wrong in principle.

(4)(e) The M25 Gantry Climbers Case: Theresa Higginson

136. No grounds additional to those which we have already considered were advanced in respect of Ms Higginson. For the reasons already discussed, we dismiss her appeal against her sentence of 24 months' imprisonment.

(4)(f) The M25 Gantry Climbers Case: Paul Bell

137. In addition to the grounds already considered, it was argued on behalf of Mr Bell that his age (22 at the time of offending), good character and short period in prison on remand (39 days) required a shorter sentence and that the sentence ought in any event to have been suspended.

138. The judge recognised his good character as a mitigating feature which shortened his sentence. He was of full age and there was no suggestion of immaturity in his case. The sentence of 22 months was neither manifestly excessive nor wrong in principle. In addition to the seriousness of the offending, immediate custody was justified by the lack of positive material to suggest a realistic prospect of rehabilitation. Age could not demonstrate that by itself.

(4)(g) The M25 Gantry Climbers Case: George Simonson

139. On behalf of Mr Simonson, it was argued that the judge failed to have sufficient regard to his young age, offending background and personal mitigation. It was submitted that the judge was wrong not to find that he was remorseful, notwithstanding the commission of further offences. It was submitted that Mr Simonson's assessment of the offending in what was described as "granular detail" was a mitigating rather than an aggravating feature.

140. Mr Simonson was 22 at the time of offending. However, he was not only intelligent, but thoughtful. His actions were not impulsive or isolated. There was nothing to suggest reduced culpability by reason of immaturity. The reference to Mr Simonson thinking through "in granular detail", in advance, the organised plan to cause disruption and lengthy delays was a quotation of his own words and such deliberate, premeditated, planned action was clearly not a mitigating feature. The judge was entitled to reject the claim of remorse, not least because there was similar offending both before and after the current offence.

141. It was pointed out that Mr Simonson was not on bail at the time of the offence, contrary to the information given to the judge. He was arrested and bailed for just over three weeks and then released under investigation, which was the position when he committed the current offence. We do not regard that as materially affecting the reasoning of the judge, nor does it persuade us that his sentence was manifestly

excessive or wrong in principle. We dismiss the appeal against his sentence of 24 months' imprisonment.

(5) The Thurrock Tunnels Case

(5)(a) The Judge's Sentencing Remarks in the Thurrock Tunnels Case

142. The Navigator oil terminal and the adjacent industrial estate are situated in an area of land which is bounded to the south and east by the river Thames, to the west by the M25 motorway and to the north by a railway line. Only two roads, St Clements Way and Stoneness Road, provide access to the industrial estate and the oil terminal. On 23 August 2022 Just Stop Oil protesters blocked St Clements Way. When they were removed, they disclosed the existence of two tunnels, one under St Clements Way (tunnel 1) and the other under Stoneness Road (tunnel 2).

143. Tunnel 1 was occupied until 4 September 2022 by Samuel Johnson, Joe Howlett and Xavier Gonzalez-Trimmer. (Mr Gonzalez-Trimmer did not stand trial, having, sadly, taken his own life in February 2024.) St Clements Way was fully closed for about 2 hours on 23 August 2022, after which one lane was reopened and a contraflow system operated.

144. Tunnel 2 was occupied by Dr Larch Maxey until 28 August 2022 and by Chris Bennett until 29 August 2022. (Autumn Sunshine Wharrie was also involved with, but did not occupy, tunnel 2. She was tried and convicted but has not sought leave to appeal against her sentence, which was suspended.) Stoneness Road was closed for 6 days, from about 12.30 pm on 23 August 2022 to about 2.10 pm on 29 August 2022, when Mr Bennett left the tunnel.

145. HHJ Graham presided over the five-week trial, at which there was extensive evidence as to the effect of the road closures on businesses at the industrial estate and the oil terminal. The judge said as follows:

> "The effect of this was considerable. It meant that access to the industrial estate was severely limited. It meant that businesses were not able to operate normally. It meant that personal matters also were caused inconvenience to members of the public who were using it there and as a result several hundred thousand pounds worth of loss was occasioned and a large amount of inconvenience to members of the public.
>
> This, in my judgment, was of a different and more serious level than those who sit in roads or even climb up on bridges because this actually involved damage underneath the road. It involved a considerable degree of planning and execution and the danger was that if these road[s] had actually collapsed, either of them, then there could have been severe damage caused or even injury and death. There was a particularly chilling piece of evidence from, I think, a fire officer who said that after he had visited the tunnel he was satisfied if the tunnel had collapsed he would be dealing with a recovery rather than saving people."

146. There was an issue at trial whether the appellants intended to cause serious harm just to those travelling to and from the oil terminal or to those travelling to and from both the oil terminal and the industrial estate. In his sentencing remarks, the judge said as follows:

i) "… this was a very serious attempt to completely disrupt the industrial area around an oil terminal.";

ii) "That road also gave access to a considerable industrial estate and the clear intention was to make that road unsafe so that it would have to be closed and that access to and from the oil terminal and the industrial estate would be impeded if not stopped.";

iii) "I accept that the main object of this operation was the oil terminal. If the oil terminal had not been there, this operation would not have taken place where it did and I accept therefore that the inconvenience and the nuisance caused to others apart from the oil terminal was by way of collateral damage but the actual damage that was caused, the actual nuisance that was caused, the actual inconvenience and costs that were caused, directly arose from these defendants' actions in digging these two tunnels."

147. After referring to the role played by the individual defendants and their personal mitigation, the judge referred to *Trowland* and said as follows (emphases added):

> "And the Court of Appeal, in my view, set out to say the approach that judges should take to these matters and start by pointing that the Sentencing Council guideline does not exist but that the custodial sentence available is up to 10 years and the Court of Appeal first of all dealt with matters of Article 10 and Article 11 of the European Convention on Human Rights, says that those should be taken into account but points out that the appropriate sentence would be very fact-sensitive according to place.
> I must say, I find Articles 10 and 11 have very little application to this case. There was no restriction on these defendants associating with each other. There is no restriction on these defendants putting their point of view forward. What this case is about is damage to the road structure and placing a - a risk such that roads had to be closed. It is, in that sense, more serious than the case the Court of Appeal considered because that just involved people climbing on bridges and disrupting traffic in that way and this case, the case I am dealing with, there was actual physical damage caused and physical damage which would, in unfortunate circumstances, have led to substantial damage or even injury and death.
> The Court of Appeal specifically rejected a submission that because this was a conscientious demonstration that non-custodial sentences were appropriate. That was rejected and the court said there are no bright lines in protest cases; rather whether or not a custodial sentence was justified turns on the individual facts.
> It talked about the matter of conscientious motive. That again is, the Court of Appeal said, a court could properly take into account but again in this case, in my judgment, that is of very limited influence given the nature of the activity which was undertaken and given that the actual offence here arose from the deliberate causation of damage to an area of the public road."

148. The judge also said as follows in relation to *Trowland*:

> "And the [court] came to the conclusion that the judge was entitled to find the protesters' culpability to be high and that the effect of the obstruction was significant and the court in fact described it as being of the utmost seriousness, affecting a strategic road network.
> Well, in this case, the culpability again must be seen as being high and the effect of the actions here again can only be described of being of the utmost seriousness and so the Court of Appeal concluded that the sentences passed by Collery HHJ KC of three years and just slightly less than three years were described as striking a fair balance and were not disproportionate."

(5)(b) General Issues in the Thurrock Tunnels Case

149. It was submitted that i) the judge's statement that conscientious motivation was of very limited influence meant that he had failed to take it into account at all; and ii) his statement that Articles 10 and 11 had very little application to the case meant that he had failed to take them into account either. However, we consider that these statements, which have to be read in the context of the judge's careful account of the decision in *Trowland*, are to be understood as indicating that the judge did, in accordance with that decision, have regard both to the appellants' conscientious motivation and to their ECHR rights, but decided, in the light of the facts of the case, to accord relatively little weight to these considerations. Notwithstanding their conscientious motivation, the judge concluded, as he was entitled to, that the appellants' culpability was high.

150. The judge also made it clear that he had considered the length of the sentences imposed in *Trowland*. In that respect, we note that the sentences imposed on Mr Bennett, Mr Johnson and Mr Howlett were significantly shorter than the sentences imposed in *Trowland* and that the sentence imposed on Dr Maxey was no longer than the sentence imposed on Mr Trowland.

151. Mr Chada submitted that the judge found that the appellants' intention was limited to causing disruption to the oil terminal and that the disruption caused to the occupants of the industrial estate was merely collateral damage. We do not accept that submission. The judge accepted that the oil terminal was the main object of the operation, but he also said that this was an attempt to disrupt the industrial area around the oil terminal and that the clear intention was to make the road unsafe so that it would have to be closed and that access to and from the oil terminal and the industrial estate would be impeded, if not stopped. One witness's unchallenged evidence was that only one in ten of the vehicles using the roads under which the tunnels were dug was connected with the oil terminal.

152. It was submitted on behalf of each appellant that the judge paid insufficient regard to his personal mitigation, which we will consider separately for each appellant. However, we note that each of the appellants relied on the effect which Mr Gonzalez-Trimmer's death had had on him as a mitigating factor.

(5)(c) The Thurrock Tunnels Case: Chris Bennett

153. Mr Bennett was 31 at the time of the offence. The judge said as follows about Mr Bennett's role in the offending, his previous convictions and his mitigation:

i) "As far as Mr Bennett is concerned, he had travelled from Bristol and was in tunnel 1 for a total of 12 days and spoke to Dr Maxey during the course of that time. He stayed there even after Ms Wharrie had been arrested and after Mr Maxey had been arrested."

ii) "The defendant Bennett has a conviction for aggravated trespass on land from 2022."

iii) "Mr Bennett says he now has remorse for the damage to the wider community, that he was not the architect of the plan, not an organiser. I have regard to the character evidence which has been uploaded onto the DCS. He is a carer now for those with dementia and has given up activism."

iv) "You played again a significant part in this very serious offending."

154. Mr Bennett's previous conviction involved him tying himself to a tanker at the Navigator oil terminal as part of a Just Stop Oil protest, which resulted in him being fined £400. He had not offended since August 2022. The character references mentioned by the judge included reference to Mr Bennett's intention not to engage with any further disruptive protests.

155. We do not consider that the sentence of 18 months' imprisonment imposed on Mr Bennett was manifestly excessive or wrong in principle. The judge was entitled to assess his culpability as high, notwithstanding his conscientious motivation, and the harm caused was clearly very high. The judge took account of all of the mitigating factors and we do not consider that they required him to impose a shorter sentence. The judge was also entitled to take the view that appropriate punishment could only be achieved by immediate custody. For these reasons, we dismiss Mr Bennett's appeal.

(5)(d) The Thurrock Tunnels Case: Dr Larch Maxey

156. Dr Maxey was 50 at the time of the offence. The judge said as follows in relation to Dr Maxey's role, his previous convictions and his mitigation:

i) "Larch Maxey is the oldest of the male defendants. He is described in the prosecution notes as highly intelligent. He has a background with Just Stop Oil and has a number of previous convictions. He broadcast saying that he was intending to stay in the tunnel and indeed chained himself to the tunnel to stop him being removed."

ii) "As I've already said, Dr Maxey has a number of previous convictions, all of a similar nature. In 2021, he was convicted of aggravated trespass on land and received a suspended sentence. In 2023, he was convicted of a conspiracy to cause a public nuisance under the old common law and received another suspended sentence."

iii) "As far as Larch Maxey is concerned, there are also character references. I am reminded that his involvement in this case through conscientious motivation and Mr [Chada] points me to the European Convention on Human Rights and he says he was not the organiser and as far as his present personal circumstances are concerned, he has caring responsibility for an elderly

> father, that he has changed his approach to climate change issues and in more personal matters he has been diagnosed as being bipolar and has been severely affected by the death of the co-accused, Mr Trimmer. He's now been out of trouble for two years."

iv) "You were clearly heavily and seriously involved in this very serious offending. You have a lot of convictions for similar offending."

157. As for Dr Maxey's previous offending:

i) In September 2019 Dr Maxey was one of those who used drones to disrupt Heathrow Airport.

ii) On 6 October 2020 Dr Maxey entered an HS2 construction site and climbed a tree. On 6 October 2021 he was given a conditional discharge for 15 months for the offence of aggravated trespass. It follows that he was subject to a conditional discharge when he committed this offence.

iii) For three weeks in January and February 2021 Dr Maxey occupied a tunnel under land related to the HS2 development, for which he was sentenced on 1 August 2023 to 3 months' imprisonment, suspended for 12 months.

iv) On 6 May 2021 Dr Maxey spray-painted a building and smashed its windows, for which he was sentenced on 30 January 2023 to 15 weeks' imprisonment for the offence of criminal damage. He was deemed to have served this sentence by reason of the time which he had spent on a qualifying curfew.

158. Interviewed in a YouTube video, the purpose of which was to recruit volunteers to his cause, Dr Maxey said, amongst other things:

> "… we need to cause an intolerable level of disruption, absolutely intolerable. If it's not intolerable, we'll fail...
> "… what's really needed is economic disruption, so if people take action in a range of ways which helps to contribute towards that pressure for change then we can, we can win, yeah.
> "… this is something I've chosen to give my life to and it's the most rewarding thing I've ever done."

159. Dr Maxey recorded messages which were broadcast on the internet during his occupation of tunnel 2. When St Clements Way was partially reopened, he demanded that it be closed.

160. Several positive character references mentioned that Dr Maxey had moved away from illegal and disruptive action. In a letter to the judge, Dr Maxey expressed his remorse and his intention not to take any disruptive action in future and gave details of his caring responsibilities for his parents and his son and his mental health, having been diagnosed with bipolar disorder in August 2023. A medical report stated that Dr Maxey's condition could have led to poor impulse control, disinhibition and reckless behaviour and also expressed the opinion that imprisonment would interrupt his therapy and give rise to a risk of self-harm.

161. In addition to the submission that the judge paid insufficient regard to the mitigating factors, it was also submitted that there was a disparity between the sentence of 3 years' imprisonment imposed on Dr Maxey and the sentences imposed on the other appellants in the Thurrock Tunnels case.

162. However, we do not consider that the sentence was manifestly excessive or wrong in principle. Dr Maxey's broadcasting activities indicate the leading role which he played, occupying tunnel 2 and thereby causing Stoneness Road to be closed for 5 days. There was no convincing evidence that his bipolar disorder affected his culpability, which was high, as was the harm caused. There were a number of mitigating factors, but these were considerably outweighed by Dr Maxey's history of similar offending in the three years preceding this offence, making it appropriate that his sentence should be significantly longer than those imposed on the other appellants in the Thurrock Tunnels case. We dismiss Dr Maxey's appeal.

(5)(e) The Thurrock Tunnels Case: Samuel Johnson

163. Mr Johnson was 39 at the time of his offence. The judge said as follows in relation to Mr Johnson's role and his mitigation:

i) "As far as Samuel Johnson is concerned, he was also a spokesman for the Just Stop Oil protesters. He had actually attended a tunnelling training session so he was well prepared for this operation. He had been there as early as late July and stayed there until the 4th of September and he complained that when the partial opening of the road over tunnel 1 had happened he demanded that it be closed again."

ii) "As far as Johnson is concerned, I am told that he has moved away from activism, he has cut ties with Just Stop Oil, he is undertaking more positive activities, has a new partner and a close relationship with his sister and his nephew."

iii) "I see no reason to distinguish between you and Chris Bennett."

164. Mr Johnson gave up a career in construction to become involved in climate activism. He used his construction skills in digging the tunnel. Like Dr Maxey, he demanded that St Clements Way be closed when it was partially reopened.

165. He had been convicted of an offence of obstructing the highway committed on 4 October 2021, for which he received a fine on 6 May 2022. He had committed no offences since August 2022. There were a number of character references. It was submitted on his behalf that he had moved away from Just Stop Oil and from direct action protesting, engaging instead with a political party, and he wrote a letter to the judge in which he apologised for the disruption he had caused. However, the pre-sentence report stated that Mr Johnson maintained that his actions were justified and proportionate. The author of the report stated that Mr Johnson's opinions were unlikely to change.

166. We consider that the judge was entitled to conclude that there was no reason to distinguish between Mr Johnson and Mr Bennett. We dismiss Mr Johnson's appeal

against his sentence of 18 months' imprisonment for substantially the same reasons as in Mr Bennett's case.

(5)(f) The Thurrock Tunnels Case: Joe Howlett

167. Mr Howlett was 32 at the time of his offence. The judge said as follows in relation to Mr Howlett's role and his mitigation:

i) "Joe Howlett is 32 years of age now, I believe. He also had been on a tunnelling training camp. He arrived there on the [20th] of August, returned on the 22nd of August, and he occupied tunnel - tunnel 1 until the 4th of September.";

ii) "As far as Howlett is concerned, he has no previous convictions. He acted out of conscientious motivation. I have seen character references in … relation to him. He is a talented musician and is once again involved in music and is trying to obtain qualification as a teaching assistant with a possibility of going abroad to pursue that.";

iii) "… I can draw a small distinction in your case because you have no previous convictions."

168. There were several character references. The Pre-Sentence Report recorded that Mr Howlett denied that he had intended to cause any harm at all. It also said that he claimed that he had been lied to about the impact which there would be on local businesses, although it also said that this seemed rather naïve. The Pre-Sentence Report also stated that Mr Howlett had expressed genuine remorse for the public and businesses who had been impacted by his actions and that he had no intention of being involved in further action of this nature, although he still had an interest in the subject matter.

169. The sentence imposed on Mr Howlett was in line with the sentences imposed on Mr Bennett and Mr Johnson, but was 3 months shorter because, unlike them, Mr Howlett had no previous convictions. We consider that this was an appropriate course for the judge to take and we dismiss Mr Howlett's appeal against his sentence of 15 months' imprisonment for substantially the same reasons as in the cases of Mr Bennett and Mr Johnson.

(6) The Sunflowers Case

(6)(a) The Judge's Ruling and Sentencing Remarks in the Sunflowers Case

170. On 13 October 2022 Ms Plummer and Mx Holland entered the National Gallery in preparation for what they were planning to do on the following day. When they returned on 14 October 2022 they each had with them a tin of tomato soup and some glue. They were wearing Just Stop Oil T-shirts under their outer clothing. They entered the gallery where the painting Sunflowers was on display. They removed their outer clothing to reveal the Just Stop Oil logos on their t-shirts. They threw the soup at the painting. They glued themselves to the wall. They were filmed and the film was soon posted on social media. Ms Plummer said "What is worth more, art or life?" She also said that fuel is unaffordable to millions of hungry families who cannot afford to heat a tin of soup.

171. Staff inspected the painting and its antique frame. The painting was protected by glass and fortunately had not been damaged. The frame sustained damage which was estimated at £8,000 to £10,000. The painting was put back on display after about 6 hours.

172. HHJ Hehir presided over the trial, which lasted for 4 days. We have already dealt (in paragraphs 37 to 42 above) with the ruling which he made during the trial. In his sentencing remarks, he said as follows about the potential harm to the painting:

> "However, it is not the value of the damage caused to the frame that is the most serious aspect of your offending. If the protective screen over the canvas had not done its job, the painting itself, Sunflowers, could have been seriously damaged or even destroyed.
> The stance of each of you at trial was a blithe dismissal of the risks involved in what you did. You each asserted that, as far as you as you were concerned, there was never any risk to the canvas because it was covered by a glass screen. But neither of you could be sure that the screen would actually protect the painting from the soup. Tellingly, the gallery staff were not sure either. At trial, the jury heard most vivid evidence of how they immediately checked whether the picture itself had been damaged. For all they knew, soup might have seeped through the glass and got onto the canvas. And you were exactly the same position.
> As Larry Keith, the head of conservation at the National Gallery, said in his evidence, had any liquid got through and made the canvas wet, the consequences could have been very serious. If anything, that is an understatement.
> Each of you claimed in evidence to care about and value Sunflowers. I reject that evidence. My assessments, having heard all the evidence about what happened, including your role, is that you could not have cared less whether the painting itself was damaged or not. I have no doubt that the publicity you each craved would have been even greater if it had."

173. Having noted that Sunflowers was literally priceless and part of humanity's shared cultural treasure, the judge added:

> "You two simply had no right to do what you did to Sunflowers, and your arrogance in thinking otherwise deserves the strongest condemnation. The pair of you came within the thickness of a pane of glass of irreparably damaging or even destroying this priceless treasure. That must be reflected in the sentences I pass.
> Section 63 of the Sentencing Code requires me, in assessing the seriousness of your offending, to consider not only the harm your offence caused, but also the harm it might foreseeably have caused. For the reasons I have explained, that foreseeable harm is incalculable."

174. The judge placed the offence in category A1 in the offence-specific Guideline, saying:

> "My assessment is that your culpability is at level A, as your offending involved a very high degree of premeditation and planning. You did not act alone. Others within Just Stop Oil were involved in the conception and execution of what you two did. You paid a previous reconnaissance visit to the National Gallery, and you were carrying the soup and glue you needed to make your protest. You

> spoke to a journalist beforehand, as I have already mentioned, and the filming and the dissemination of what was filmed on social media had also clearly been planned in advance.
>
> So far as harm is concerned, your offending is in category 1 because of the substantial social impact involved. Any attack on priceless art which is on public display can have very harmful societal consequences. Stunts like yours lead to more onerous and intrusive security measures in art galleries and other locations where valuable art and artefacts are on display. That may deter some people from visiting art galleries, museums, and the like. There is even the risk that some treasures might have to be withdrawn from public view altogether."

175. The starting point for a category 1A case is 18 months' imprisonment. The judge said that one of the aggravating factors mentioned in the Guideline was present, in that this was a case of damage to a cultural asset. He said that an uplift to the starting point was required to reflect the harm which could foreseeably have been caused to the painting itself. He added that he did not consider that either the appellants' conscientious motivation or the allegedly non-violent nature of their protest provided any mitigation.

176. After considering the appellants' previous convictions and mitigation, the judge explained that he considered that appropriate punishment could only be achieved by immediate custody.

(6)(b) General Issues in the Sunflowers Case

177. We have already dealt with the questions whether i) account should have been taken in sentencing the appellants of their conscientious motivation (see paragraph 26(1) above) and ii) whether Articles 10 and 11 were engaged in this case (see paragraphs 37 to 42 above). The judge was in error in treating these matters as irrelevant to the sentencing of the appellants. As noted in *Trowland*, however, conscientious motivation is relevant to the assessment of culpability and it does not preclude a finding that that an offender's culpability was high, although each case has to be decided on its own facts.

178. It was said for the appellants that the judge should have placed their offending in category B1 in the Sentencing Council Guideline for Criminal Damage, on the basis that their culpability fell into the medium, rather than the high, culpability category. It was submitted that the planning for the offence was not particularly sophisticated and was more appropriately characterised as "Some planning", rather than "High degree of planning or premeditation".

179. The judge was fully entitled to place this offence in the high culpability category. The appellants devised a plan to carry out a particularly high profile stunt, they conducted reconnaissance, they equipped themselves with what was needed, they spoke to a journalist and they arranged for their activity to be filmed to maximise the attendant publicity. This was much more than just "Some planning".

180. Although it was accepted in the grounds of appeal that harm fell into category 1, it was also submitted that the judge was wrong to have regard to the risk of harm to the painting itself, rather than the actual harm caused to the frame. There were two limbs to this submission. First, it was submitted that there was no evidence that the painting was at risk of damage. This was a factual issue which the trial judge was well placed to assess and we see no reason to disagree with his assessment that the reaction of the

gallery staff indicated that they considered that there was a risk of damage to the painting.

181. Secondly, it was submitted that the judge misapplied s. 63 of the Sentencing Act 2020, which provides as follows:

> "Where a court is considering the seriousness of any offence, it must consider—
> (a) the offender's culpability in committing the offence, and
> (b) any harm which the offence—
> (i) caused,
> (ii) was intended to cause, or
> (iii) might foreseeably have caused."

182. It was submitted that s. 63(b)(iii) imposes a wholly subjective test. We do not agree. The use of the word "might" indicates that the question is not whether the defendant did foresee damage, but whether the causing of damage might have been foreseen. That is an objective test. The appellants argue that, because they had seen (during their reconnaissance visit the day before) that the painting was held behind glass, there was no foreseeable harm to the painting. However, knowledge that there was glazing did not mean that potential serious harm to the painting was not foreseeable. There was, for example, no reason to believe, or have any confidence in a belief, that the glazing would provide complete protection for the painting. So much is demonstrated by the fact that, in the immediate aftermath of the attack, museum attendants had great concerns for the painting's safety.

(6)(c) The Sunflowers Case: Phoebe Plummer

183. At the same time as sentencing Ms Plummer for this offence, the judge had to sentence her for an offence of interfering with key national infrastructure, contrary to s. 7 of the Public Order Act 2023, committed on 15 November 2023. This is the offence referred to in *R v Sarti* [2025] EWCA Crim 61. The judge imposed a consecutive sentence of 3 months' imprisonment for that offence. Ms Plummer has not applied for leave to appeal against that sentence.

184. The judge said as follows in relation to Ms Plummer:

> "Phoebe Plummer, you turned 23 yesterday. You were 21 when you committed the offence of criminal damage, and 22 when you committed the offence of interfering with key national infrastructure.
> You are a committed Just Stop Oil activist and have previous convictions and many previous arrests to show for it.
> You committed the slow-walking offence, for which I also have to deal with you, while on bail for the criminal damage matter, and other matters too. Furthermore, you did so in breach of the conditional discharge imposed on you only the previous month for a summary-only public order offence of failing to comply with the conditions for a procession, also in the context of a slow-walking protest. I take no action in respect of that breach, but it is a seriously aggravating feature of your offending on the second matter.
> You clearly have deeply held convictions about climate change and other matters, and you are perfectly entitled to them of course. But you have evidently

> decided that your beliefs entitle you to commit crimes as and when you feel like it. They do not.
> I have read, with care, the pre-sentence report and other mitigation materials provided to me, all now uploaded to the sentencing section of the relevant digital case file.
> You have represented yourself at the sentencing hearing, as you did at both trials. You delivered your own mitigation. I was treated, if that is the word, to a lengthy exposition of your political and ideological views, not only about climate change but also about a variety of other matters. You are entitled to your views and are not being punished for them. You are being punished for committing criminal offences.
> But I do repeat what I said when I, at one point, interrupted your address to the court. The suggestion that you and others like you, convicted by juries of your peers following fair trials in a democratic state under the rule of law are political prisoners is ludicrous, self-indulgent, and offensive. It is offensive to the many people in other parts of the world who are suffering persecution, imprisonment, and sometimes death for their beliefs, in places where neither democracy nor just laws are to be found. Perhaps one day you will come to realise that, although I fear that day is some way off yet.
> You have no remorse for what you did. Instead, you are proud of it. You made no effort to offer me any actual mitigation. In truth, there is none of any substance in your case."

185. The Pre-Sentence Report stated on the one hand that Ms Plummer appeared to be a vulnerable young person who was easily influenced by others and who displayed deficits in understanding the impact her decisions and choices have on others, but on the other hand that she was a clever young person who was open and honest about the fact that she would continue to protest after her sentencing.

186. We do not consider that Ms Plummer's sentence of 24 months' imprisonment was manifestly excessive or wrong in principle. As we have said, the judge was entitled to place her offence in category A1 in the Guideline. "Damage caused to heritage and/or cultural assets" was an aggravating factor. The sentence imposed was well within the range for a category A1 offence, which carries a custodial range up to 4 years' imprisonment. Ms Plummer was 21 when she committed the offence, but the judge had presided over the trial and was able to assess her level of maturity. She had continued to commit protest offences. Overall, the judge was entitled to conclude that the shortest possible sentence that he could impose was 24 months' imprisonment. He was also entitled to conclude that appropriate punishment could only be achieved by immediate imprisonment.

(6)(d) The Sunflowers Case: Anna Holland

187. The judge said as follows in relation to Mx Holland:

> "Anna Holland, you are now 22 years of age and were 20 at the time of your offence. You have one previous conviction, in June 2023, for an offence of wilfully obstructing the highway. Sorry, in October 2022 for an offence of wilfully obstructing the highway. You were conditionally discharged for that matter in June 2023. Your conviction here does not put you in breach of that conditional discharge. I do note, however, that you committed that offence on 6

> October 2022, only eight days before you committed the offence for which I must now sentence you. If not on police bail, you had at the very least, been released under investigation by the time of this offence.
> I have read and reflected on the pre-sentence report in your case, and on the many character references supplied on your behalf. You are an intelligent young woman who comes from a loving and supportive family. I was particularly struck by the frank and realistic comments in your mother's character reference. There is no doubt that what you did has had a substantial adverse effect on your family. I can see that you acknowledge that. You are currently studying part-time for a Master's degree at Newcastle University. The mitigation material shows how highly regarded you are by those who know you there as well as those who know you in other contexts. You have not reoffended since October 2022 and I am prepared to accept that you do not intend to offend again."

188. The character references before the judge included statements that:

> "She struck me as both confident and mature in relation to her studies.";
> "… I've been deeply impressed by her steadfast purpose, self-awareness and integrity. She does nothing without thinking it through, weighing both tactical considerations and deep moral convictions."

189. On the other hand, as the judge recognised, they also confirmed that Mx Holland had decided not to repeat her offending.

190. Mx Holland's sentence of 20 months' imprisonment was appreciably shorter than that imposed on Ms Plummer, to reflect the fact that, unlike Ms Plummer, she had given up offences of this nature. The judge took account of her youth. It was submitted that she was immature, but, in the respects we have indicated, the character references suggested that she was mature for her age. We dismiss her appeal for substantially the same reasons as we gave in Ms Plummer's case.

(7) Conclusion

191. For the reasons given in this judgment, having granted leave to appeal against sentence in each case:

i) We quash the sentences imposed in the M25 Conspiracy Case and substitute the following sentences:

a) Roger Hallam: 4 years' imprisonment.

b) Daniel Shaw: 3 years' imprisonment.

c) Lucia Whittaker de Abreu: 30 months' imprisonment.

d) Louise Lancaster: 3 years' imprisonment.

e) Cressida Gethin: 30 months' imprisonment.

ii) In the M25 Gantry Climbers Case:

a) We quash the sentence imposed on Gaie Delap and substitute a sentence of 18 months' imprisonment.

b) We dismiss the appeals by Paul Sousek, Theresa Higginson, Paul Bell and George Simonson.

iii) In the Thurrock Tunnels Case, we dismiss the appeals by Chris Bennett, Dr Larch Maxey, Samuel Johnson and Joe Howlett.

iv) In the Sunflowers Case, we dismiss the appeals by Phoebe Plummer and Anna Holland.