



Neutral Citation Number: [2022] EWHC 1822 (Admin)

Case No: CO/2696/2021

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14/07/2022

**Before:**

**LORD BURNETT OF MALDON,**  
**LORD CHIEF JUSTICE OF ENGLAND AND WALES**  
**MR JUSTICE HOLGATE**  
**MR JUSTICE SAINI**

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**Between:**

(1) TOM BENNETT  
(2) TIM MARTIN  
(3) BEN MOSS  
(4) TIM MOXON

**Appellants**

- and -

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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**Jude Bunting QC and Owen Greenhall** (instructed by **Hodge Jones and Allen Solicitors** and **ITN Solicitors**) for the **Appellants**  
**Sasha Wass QC and James Keeley** (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing date: 30 June 2022  
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**Approved Judgment**

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Thursday 14 July 2022 at 10am.

**Mr Justice Saini:**

**I. Overview**

1. The Appellants appeal by way of case stated against a decision made on 30 April 2021 in the Crown Court at Southwark by HHJ Perrins, sitting with two justices. The Crown Court dismissed the Appellants' appeals against their convictions in the Magistrates' Court for the offences of failing to comply with a condition imposed upon an assembly on 19 April 2019, contrary to sections 14(1) and 14(5) of the Public Order 1986 ("the 1986 Act").
2. The condition (referred to by the Crown Court as the "Direction", a term I will adopt) had been imposed by Acting Inspector Tara Johnson ("Inspector Johnson"), the Bronze Commander at Waterloo Bridge on an Extinction Rebellion protest at Waterloo Bridge on 19 April 2019.
3. The Direction was in the following terms:

"I hereby give a direction imposing conditions on the persons organising or taking part in the assembly, which appear to me to be necessary to prevent serious disorder, damage, disruption or intimidation. Anyone assembling at the Extinction Rebellion protest 'This is an emergency' assembly which is taking place at Waterloo Bridge and wish to continue with their assembly must go to Marble Arch, the site of 'This is an emergency' protest site."
4. The Crown Court provided a written ruling ("the Ruling") containing its reasons for dismissing the appeal. As identified in the Ruling, the Crown Court also had before it a number of other appeals concerning protests by other Extinction Rebellion supporters at Parliament Square and Oxford Circus. The appeal before us does not concern those other protests but they are, as I describe below, said to be relevant in certain respects.
5. The Case Stated asks for the opinion of the High Court on the following questions:
  - (1) Was the Court wrong in law and/or irrational to find that the Direction was reasonably necessary and proportionate to prevent serious disorder?
  - (2) Was the Court wrong in law to hold that the Direction did not impermissibly prohibit future assemblies?
  - (3) Was the Court wrong in law to hold that the Direction did not lack legal certainty?
  - (4) Was the Court wrong in law to hold that a lawful condition imposed under Section 14 of the Public Order Act 1986 can require those assembling to move to a location which is not part of the 'scene'?
6. In the Case and the Ruling the Crown Court set out its findings of fact and reasons of law for deciding these questions against the Appellants. On an appeal by way of case

stated we must confine ourselves to the facts found. It is well-established that such an appeal is not a vehicle to ventilate factual issues. Insofar as there is a challenge to the facts found below, the scope for such challenges is limited to complaints that there was no evidence to support such findings, or that the factual findings were irrational.

7. I will refer further to parts of the Ruling below but at this stage will set out the findings of fact set out in the Case:

“On 19.04.19 an Extinction Rebellion protest took place on Waterloo Bridge. Other protests took place at different locations across London including: Parliament Square, Oxford Circus and Marble Arch. Acting Inspector Tara Johnson was the Bronze Commander at Waterloo Bridge at the material time. During the course of the day, she was made aware of disruption being caused as a result of the protesters’ actions on the bridge. The protest included a total blockage of the bridge by an occupation with a large number of protesters. There was consequential disruption to traffic with motorised vehicles unable to cross the bridge, though bicyclists and pedestrians were able to pass. Acting Inspector Johnson formed the view that the assembly may result in serious disruption to the life of the community. This view was reasonably held. Acting Inspector Johnson made a direction under Section 14 of the Public Order Act 1986 (‘POA 1986’) in the following terms [set out above]. It is accepted that the name of the protest at Marble Arch was an error and should have read ‘Act Now’ nothing turns on this technical error which was not relied on by any party. The Section 14 Direction was made in terms that appeared to AI Johnson to be necessary and was reasonable in all the circumstances. The terms of the Section 14 Direction were explained to the Appellants each of whom refused to move resulting in their arrest. The Appellants accepted they were aware of the Section 14 Direction but challenged its legality”.

## **II. Legal Framework**

8. Section 14 of the 1986 Act is headed “Imposing conditions on public assemblies” and confers powers to regulate static assemblies. At the material time (prior to amendment by the Police, Crime, Sentencing and Courts Act 2022), it read as follows:

“14.—(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that—

- (a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

(2) In subsection (1) "the senior police officer" means —

(a) in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and

(b) in relation to an assembly intended to be held, the chief officer of police.

(3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.”

9. A person who organises or takes part in an assembly, and knowingly fails to comply with a condition commits an offence: section 14(4) and 14(5).
10. These and other parts of the 1986 Act, and the White Paper preceding it, *Review of Public Order Law (Cmnd 9510)*, were considered in some detail by the Divisional Court in R (Jones and others) v The Commissioner of Police for the Metropolis [2019] EWHC 2957 (Admin); [2020] 1 WLR 519 (“Jones”). The effect of the legislation (insofar as relevant to the arguments made in the appeal) may be summarized as follows. Section 14 is site-specific. A condition can only be imposed on an individual “public assembly”. The power can only be exercised in relation to an assembly which is being held (as opposed to one which is intended to be held) by an officer “present at the scene”. It cannot be used to impose conditions on separate assemblies in other locations.

### **III. Meaning of the Direction**

11. As developed orally, a number of the Appellants’ submissions depend upon the Direction having a certain meaning, or upon there being an ambiguity/uncertainty in the Direction. I will accordingly begin by considering the terms of the Direction.
12. It is for the Court to determine the meaning of the Direction as a matter of law. It must be interpreted objectively according to its language and in context. Context does not however include, as argued on behalf of the Appellants, the subjective interpretations of any of the Appellants or indeed of Inspector Johnson.
13. I also reject the submission that the meaning of this Direction is to be determined by reference to other directions which may have been made by other police officers that

day in relation to other assemblies (also addressed in the Ruling but not in issue before us). That is not part of the context. The Direction is a free-standing instrument intended to have legal effect upon those to whose attention it is brought. Directions made elsewhere in London by other officers regulating other assemblies cannot determine its meaning.

14. In the Appellants' skeleton it is submitted that the Crown Court's conclusions on interpretation of the Direction "flew in the face of the evidence". But, as I have said, the evidence of subjective understandings of the Direction is simply irrelevant.
15. Turning to the terms of the Direction, I agree with the Crown Court that its terms are clear and unambiguous:
  - (1) First, the Direction clearly identified the people to whom it applied: anyone assembling on Waterloo Bridge as part of the Extinction Rebellion protest.
  - (2) Secondly, it clearly told them what they were required to do: if they wished to continue their protest ("their assembly") they had to go the protest site at Marble Arch.
16. In my judgment, on no sensible reading can the Direction be construed as prohibiting any future assemblies. Its language makes clear that it is concerned only with those assembled on the Bridge, and that they are directed, if they wish to continue *their* assembly, to go to Marble Arch.
17. Finally, I record that Inspector Johnson was in error in referring in the Direction to the name of the assembly ("This is an emergency") to which protesters were being directed at Marble Arch. It is common ground that nothing turns on this.
18. I now turn to the four questions.

#### **IV. The Questions**

Question 1: Was the Court wrong in law and/or irrational to find that the Direction was reasonably necessary and proportionate to prevent serious disorder?

19. The issue for the Crown Court was whether imposition of a condition in the terms of the Direction was reasonably necessary and proportionate to prevent serious disorder. The Crown Court found as a fact that this test was satisfied. The Appellants' submission is that the Crown Court either erred in law and/or came to an irrational conclusion. It was submitted by the Appellants that the Direction was not reasonably necessary and/or proportionate on the basis that a condition which simply imposed a limit on the duration of the protest at Waterloo (and would have brought it to an end) could have been made. It was also said that this would not have had the effect of prohibiting those subject to a direction from protesting elsewhere in London. So, it was argued, that there was available a less intrusive interference with the Article 10 and 11 ECHR rights of those protesting.
20. Before turning to the facts found in the Crown Court, I should record that insofar as the submission made depends on the Direction being disproportionate because it purported

to ban *all* assemblies, that argument fails as a matter of construction, for the reasons I have set out above. It did not have that effect. It was on its plain and natural meaning directed only at the assembly on Waterloo Bridge.

21. Turning then to the merits of the Appellants' submission on proportionality, the starting point is that it is well-established in law that satisfaction of the stringent statutory test for making a condition under section 14 will *in itself* establish that the measure satisfies the ECHR standard of proportionality: see James v Director of Public Prosecutions [2016] 1 WLR 2118 at [39]-[42]. There was no issue that this case correctly stated the law.
22. The Crown Court heard evidence from Inspector Johnson and explained its conclusions as follows in its Ruling:

“...Acting Inspector Johnson gave clear and compelling evidence about the scale and extent of the disruption on the bridge. She believed that the protest would result in serious disruption to the life of the community and in our view that was an entirely reasonable belief in the circumstances. She went on to give equally compelling evidence on the reason why she felt it was necessary to impose a s.14 order in the terms that she did and we are satisfied that she considered a number of less intrusive conditions before reaching her conclusions. These included re-opening one carriageway to traffic, limiting the duration of the protest, moving it to a nearby location and arresting protesters for obstructing the highway. She reached the conclusion that none of these were practical or likely to be effective. We cannot fault her reasoning and agree with her analysis of the situation. We find that the order was made in terms that appeared to her to be necessary and that it was reasonable in all the circumstances...”.

23. In my judgment, these findings based on the oral evidence are a complete answer to the proportionality complaint. The findings were open to the Crown Court. The senior officer considered the less intrusive options (including a duration limit) and her evidence of conditions on the ground was accepted by the Crown Court. She applied the statutory test and proportionality was accordingly established.

Question 2: was the Crown Court wrong in law to hold that the Direction did not impermissibly prohibit future assemblies?

24. The Crown Court was right to construe the Direction as not having this effect. I refer to my reasons above in relation to construction and will not repeat them.

Question 3: was the Crown Court wrong in law to hold that the Direction did not lack legal certainty?

25. Again, for the reasons given above, the Crown Court was right in my judgment to find there was no legal uncertainty. It was argued that the Appellants and Inspector Johnson

interpreted the Direction in a different way to the Crown Court. However, subjective interpretations of the Direction are not relevant. Construction of an instrument like the Direction is a matter of law applying well-established principles.

26. If, applying those principles, a true ambiguity arises, that might be legally relevant to lawfulness of a direction on uncertainty principles (subject to what I say below at [27]). But that is not this case. Here there is no ambiguity or vagueness of the types identified in Cuadrilla Bowland Limited v Persons Unknown [2020] EWCA Civ 9; [2020] 4 WLR 29 at [57], where the court was concerned with “tests for unclarity” by reference to the language used in a court order. Nothing in that case supports a submission that a lack of clarity is to be evidenced by subjective understandings of the language. That case does not assist the Appellants.
27. Although I do not consider the language of the Direction to be ambiguous, even if there were such ambiguity, that would not be the end of the matter. A statutory condition will be held void for uncertainty only if it can be given no meaning or no sensible or ascertainable meaning. But if the uncertainty stems only from the fact that the words of the measure are ambiguous, it is well settled that it must, if possible, be given such a meaning as to make it reasonable and valid, rather than unreasonable and invalid. It would only be invalid for uncertainty if it was so uncertain in its language as to have no ascertainable meaning, or so unclear in effect as to be incapable of certain application in any case. See Percy v Hall [1997] QB 924 (CA).
28. In my judgment, the Crown Court was right to hold that the terms of the order were sufficiently clear that any protester would have easily understood what was required of them.

Question 4: was the Crown Court wrong in law to hold that a lawful condition imposed under s.14 Public Order Act 1986 can require those assembling to move to a location which is not part of the ‘scene’?

29. It was argued on behalf of the Appellants that section 14 of the 1986 Act restricts the senior officer present at the “scene” to imposing conditions on movement only within the “scene” of the existing protest. It was accepted by Leading Counsel for the Appellants that there is nothing in the language of the section itself which imposes this limitation. Not being able to use anything in the statutory language to support his submission, he instead sought to draw support for his submission from Jones and wider Convention principles.
30. The relevant part of section 14 permits “directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held... as appear to him necessary to prevent such... disruption” (my underlining). It is clear that the location to which an assembly may be moved is another “place”. There is no reference here to that place being limited a location within the “scene” of the existing assembly. There are of course restrictions as to where that new place may be: it must be somewhere where the assembly can in fact continue and where it would be reasonable for the protesters to relocate to, bearing in mind the importance of public protest in a place of prominence.
31. However, there is nothing in Jones to support the submission that the new “place” must be within the same “scene”. The discussion of “scene” in Jones is concerned with a

different issue. By statute the senior police officer who may make a section 14 direction imposing conditions in relation to an assembly being held (as opposed to one which is intended to be held) has to be the senior officer at the “scene”: see Jones at [66]-[67]. In that case, this had implications as to whether a “public assembly” within the Act was a single assembly (a “scene”) as opposed to separate gatherings. None of that is of relevance to the present case.

32. Equally, there is nothing in the arguments that Convention principles effectively require one to read into section 14 some form of limitation restricting the “place” to which an assembly can be moved to an area within the same “scene”. If the Direction meets proportionality standards under the Convention (which the Crown Court rightly found to be the case) that is an end of the matter. There was rightly no suggestion before us that Inspector Johnson, having decided that the Waterloo Bridge protest could not continue there but should be continued just over 2 miles away in Marble Arch, made an unreasonable decision in relation to the *location* of the new place for the continuation. That was plainly a rational, proportionate and justifiable decision on the facts. Indeed, it was in many ways it was a more proportionate approach than imposing a time limit on the Waterloo Bridge protest and then ending it (the approach advocated in certain of the Appellants’ submissions).

## V. Conclusion

33. Subject to the views of my Lords, I would dismiss the appeal, and answer each of the Questions in the Case with the answer “No”. The Crown Court correctly answered each of these questions in an impressive and concise judgment.

### **Mr Justice Holgate:**

34. I agree.

### **Lord Burnett of Maldon CJ:**

35. I also agree.