



# Neale v DPP Halcrow v CPS

Tom Wainwright, Garden Court Chambers

16 March 2021



GARDEN COURT CHAMBERS



@gardencourtlaw

## Neale v DPP - Circumstances

---

Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020/353, as amended by the  
Health Protection (Coronavirus Restrictions) (Wales)(Amendment) Regulations 2020/399

The Applicant was asked numerous times to provide a reason as to why he was out in public and told that he was obliged to give the officers such a reason. The applicant declined to do so.



# Neale v DPP - Circumstances

---

PCSOs requested assistance and PCs A and B attended the scene. PC A spoke with the applicant and asked for his name and address. The applicant refused to provide this information.

The purpose of the police officers requesting the applicant's details was to enable a fixed penalty notice to be issued, as the applicant had failed to provide any reason for being outside his home, and was therefore prima facie in breach of the Coronavirus Regulations.

The applicant was arrested and taken to the police station.



# Neale v DPP - Charges

---

1. Breach of Coronavirus Regulations
2. Obstructing a Police Officer: PC A



# Neale v DPP - Magistrates' decision

---

1. Acquitted of Breach of Coronavirus Regulations
2. Convicted of Obstructing a Police Officer



## Neale v DPP - Reasons

---

*'...the purpose of the legislation would be defeated if the applicant were permitted to avoid the issuing of a fixed penalty notice by refusing to provide his name and address...*

*If one didn't have to respond to police during this exceptional time of pandemic, the Regulations would have no use and be inoperable. The purpose of the legislation was to introduce emergency enforceable measures to help control the spread of the coronavirus pandemic. It was implicit that the applicant was obliged to provide his details to enable the police officer to take action in order to give effect to the Regulations.'*



## Neale v DPP - Law

---

*Rice v Connolly* [1966] 2 QB 414

*'It seems to me quite clear that though every citizen has a moral duty or, if you like, a social duty to assist the police, there is no legal duty to that effect, and indeed the whole basis of the common law is the right of the individual to refuse to answer questions put to him by persons in authority...'*





# Neale v DPP - Law

---

*Dibble v Ingleton* [1972] 1 QB 480

*‘...refusal to act cannot amount to a wilful obstruction under section 51 unless the law imposes upon the person concerned some obligation in the circumstances to act in the manner requested by the police officer.’*



## Neale v DPP - Case Stated

---

1. *Rice v Connolly* determined that for an obstruction to be ‘wilful’ it must be done without lawful excuse and there is no common law duty to provide personal details to a police officer;
2. There is no explicit legislative duty to provide details to the police in these circumstances (where Parliament wished to create such a duty, it has done so - e.g. Road Traffic Act 1988 s.37, Game Act 1831 ss31-31A);
3. Article 8 of the European Convention requires that any such duty be clear so as to be ‘in accordance with the law’ (e.g. *Mengesha v CPM*)
4. In all the circumstances, no legal duty to provide personal details to the police should be implied.



# Neale v DPP - Judgment

---

As Mr Neale was not legally obliged to give his details, his refusal was not ‘wilful’, therefore not guilty of wilful obstruction:

*‘The right to remain silent is not reserved only for those who are innocent and beyond suspicion.’*

*‘Courts should be wary of expanding police powers by implication.’*



## Neale v DPP - Caveats

---

Regulations not rendered inoperable *because* a person could be arrested to ascertain their details.

Police and Criminal Evidence Act 1984, s.24(5):

*‘(a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name)*

*(b) correspondingly as regards the person's address...’*



# Neale v DPP - Caveats

---

## Police Reform Act 2002 Sch 3C, para 3

*(1) A CSO... may require a person to give his or her name and address if the CSO... has reason to believe that –*

*(a) the person has committed a relevant offence in the relevant police area...*

*(2) A person who fails to comply with a requirement under sub-paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.*



# Neale v DPP - Caveats

---

## Police Reform Act 2002 Sch 3C, para 3

*(3) In this paragraph, “relevant offence” means any of the following offences –*

*(a) an offence in respect of which the CSO or CSV is authorised to give a penalty notice (whether in consequence of paragraph 2 of this Schedule [graffiti, littering etc] or in consequence of provision included in his or her designation in reliance on section 38(6B)(a))...*

## Police Reform Act 2002 Section 38(6B)

*(6B) The powers and duties that may be conferred or imposed on a person designated under this section are –*

*(a) any power or duty of a constable, other than a power or duty specified in Part 1 of Schedule 3B (excluded powers and duties)...*



# Halcrow v CPS [2021] EWHC 483 (Admin)

---

## Stonehenge Regulations 1997

### Regulation 3.

*The following acts are prohibited:*

...

*(h) without reasonable excuse entering or being upon any part of the site of the monument to which access is at any time restricted by barrier or prohibited by notice.*



## Halcrow v CPS – Rights engaged

---

*13. ...if there had been an impermissible interference with the appellants' rights under articles 9, 10 and 11 of the ECHR, the appellants would have been able to rely on those rights as a reasonable excuse for accessing the stone circle.*

*24. The Court found that the appellants' conduct engaged articles 9, 10 and 11 of the ECHR. In respect of the five offences, the Court found that the appellants were present both to practise their religion and to protest against the management of the site by English Heritage.*





## Halcrow v CPS – Prosecution to justify

---

*42. ...the Crown Court was also required to focus on the evidence adduced and relied on by the prosecution to justify the interference with the rights of the appellants. This is so that the court can “undertake a close and penetrating analysis of the factual justification”, see R v Shayler [2002] UKHL 11; [2003] 1 AC 247 at paragraph 61, to determine whether any interference with fundamental rights was justified and proportionate.*



## Halcrow v CPS - Proportionality

---

*49... it would have meant in practice that access to the stone circle would have had to be lifted as and when any person chose to walk into the stone circle, so long as they were protesting or exercising religious rights. Such access would inevitably have an adverse effect on Stonehenge to the detriment of current and future generations. Therefore the interference on the specific occasions with the appellants' rights under articles 9, 10 and 11 of the ECHR was justifiable and proportionate.*





# Protest & the Coronavirus Regulations

Lochlinn Parker

# Protest & the Coronavirus Regulations

## Overview of the Regulations

Current version– Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020

All of England is currently in Tier 4 – Sch 4 Part 3

Need a ‘reasonable excuse’ to leave the house – Sch 3A(1)

- **No reasonable excuse? – Direction to return home (R9(2A)), though must be necessary and proportionate (R9(7)) . Offence – contravention of regulation or ignoring direction (R10(1)(a-c)) or obstruction (R10(1)(d)). FPN of £100-£6,400 (R12(1)).**

Cannot take part in gatherings outside of over two people, unless exempt – Sch 3A(4) [Inside gatherings Sch3A(3)]

- **Consequence - Direction to disperse (R9(3)(a)), can remove with force (R9(3)(c)&(9(4)). Offence (as above R10). FPN of £400-£6,400 (R12(3A)).**

Cannot organise non-exempted gatherings outside of over two people, unless exempt - Sch 3A(5)

- **Consequence – Note, no direction to disperse etc. Offence – contravention of regulation (R10(1)(a)) or obstruction (R10(1)(d)) . FPN of £10,000 (R12(4)(d)).**

Protest is not specifically a ‘reasonable excuse’ or an exempt gathering, though it was in previous incarnations of the Regulations.

Lochlinn Parker – ITN

Solicitor, 16/03/2021

# Protest & the Coronavirus Regulations

**BUT:** The Regulations are secondary legislation and so are ‘trumped’ by statute.

**AND:** Protest has not been specifically banned by the Regulations or any other provision.

**ALSO:** Court of Appeal in *Dolan v Secretary of State for Health And Social Care* ruled that the Regulations engage Convention Rights.

**THEREFORE:** Your rights under Article 10 and 11 of the ECHR, protected by the Human Rights Act 1998, have to be read into any enforcement of the Regulations. A10 & A11 are qualified, so necessary and proportionate restrictions can be placed on a protest.

**MEANS:** Only necessary and proportionate action can be taken by the police to fulfil their ‘duty to facilitate protest’.

# Protest & the Coronavirus Regulations

## Reclaim these Streets case

Claimants sought following declaration:

- Schedule 3A to the All Tiers Regulations 2020 insofar as it prohibits outdoor gatherings, is subject to the right to protest protected by the Human Rights Act 1998;
- The Met Police's policy prohibiting all protests irrespective of the specific circumstances, is accordingly erroneous in law;
- Persons who are exercising their right to protest in a reasonable manner will have a reasonable excuse for gathering.

Met Police had previously indicated that protest was banned. Operation Pima policy. Accepted in Court that this was wrong, but said nevertheless protest could not go ahead.

[X-ref CC BJ Harrington – NPCC Public Order lead – gave evidence that the right to protest 'absolutely' remained under Coronavirus Regulations – JS Committee on Human Rights 24/02/21. Also see - NI BLM protest JR.]

**COURT DECISION** - Protest not illegal per se under the Regulations, must apply ECHR, is a reasonable excuse.

*These regulations are capable of being applied to protests and demonstrations in general. It is possible when article 10 and 11 are being applied, that the outcome of applying the relevant test is that a particular protest or demonstration should not go ahead [but] that is a matter to be considered in the circumstances of each case.*

# Protest & the Coronavirus Regulations

## What does this mean?

- A blanket policy banning protest would be unlawful.
- Unclear at what point police could intervene but they must carefully and anxiously assess the situation.
- Health and Safety risk assessment and action on the ground likely to be important.
- Size and form of the protest is relevant.
- As Coronavirus restrictions ease, the extent of the right to protest will increase.
- The primary question for police forces is not whether anyone is breaking the law but how we they facilitate a peaceful protest.



# Police, Crime, Sentencing and Courts Bill 2021

Anna Morris



### **Why do the Police say that the Measures are needed?**

“Ever since the first large-scale Extinction Rebellion protest in April last year I have been talking publicly and with the government about the potential for change to powers and to legislation that would enable the police to deal better with protests in general given that the act that we work to – the Public Order Act – is now very old, [dating to] 1986.”

“But specifically to deal with protests where people are not primarily violent or seriously disorderly but, as in this instance, had an avowed intent to bring policing to its knees and the city to a halt and were prepared to use the methods we all know they did to do that.”

### **Metropolitan Police Commissioner, Cressida Dick**

Fact Sheet – Police, Crime, Sentencing and Courts Bill 2021 –

<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-protest-powers-factsheet>”

### Why the Government says these measures are needed?

“Existing public order legislation was passed in 1986 and is no longer fit for managing the types of protests we experience today.

The highly disruptive tactics used by some protesters cause a disproportionate impact on the surrounding communities and are a drain on public funds. For example, the Metropolitan Police Service’s cost for policing Extinction Rebellion’s 2019 “April Uprising” in London was over £16 million.

These measures will improve the police’s ability to manage such protests, enabling them to dedicate their resources to keeping the public safe.

Fact Sheet – Police, Crime, Sentencing and Courts Bill 2021 – <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-protest-powers-factsheet>”

# Section 46 amends Mode of Trial provisions in Magistrates Court Act 1980

Criminal Damage becomes either way offence, even if value is less than £5,000 if it is committed by destroying or damaging a 'memorial' which is defined as:

- (a) a building or other structure, or any other thing, erected or installed on land (or in or on any building or other structure on land), or
- (b) a garden or any other thing planted or grown on land, which has a commemorative purpose.

Any moveable thing (such as a bunch of flowers) which—

- (a) is left in, on or at a memorial, and
  - (b) has (or can reasonably be assumed to have) a commemorative purpose,
- is also to be regarded as a memorial.

# Section 46 amends Mode of Trial provisions in Magistrates Court Act 1980

Something has a commemorative purpose if at least one of its purposes is to commemorate—

- (i) one or more individuals or animals (or a particular description of individuals or animals), or
- (ii) an event or a series of events (such as an armed conflict).

It is immaterial whether or not any individuals or animals concerned are or were (at any material time)—

- (a) living or deceased, or
- (b) capable of being identified.

NB - Sentence for Criminal damage stat. maximum on indictment is 10 years.

# Amendments to s.12 and 14 Public Order Act 1986

- Introduce into s.12 and s.14 the ability to impose conditions where there is a risk that noise will cause serious disruption.
- Brings s.14 in line with s.12 in that if statutory criteria are fulfilled Senior Police Officer can give directions imposing on the persons organising or taking part in the **procession or assembly** such conditions as appear to him necessary to prevent such disorder, damage, disruption, impact or intimidation.
- Changes the *mens rea* for the offence of breaching conditions.

# Section 54 – 56 of the Bill

## Amend ss.12-14 of the Public Order Act 1986

### Imposing conditions on public processions (s.12 POA 1986) and public assemblies (s.14 POA 1986)

(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public [**procession/assembly**] is being held or is intended to be held and to its route or proposed route, 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~~

(aa) in the case of a [**procession/assembly**] in England and Wales, the **noise** generated by persons taking part in the procession may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession,

(ab) in the case of a [**procession/assembly**] in England and Wales—

(i) the noise generated by persons taking part in the [**procession/assembly**] may have a relevant impact on persons in the vicinity of the procession, and

(ii) that impact may be significant, 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 [**procession/assembly**] such conditions as appear to him necessary to prevent such disorder, damage, disruption, impact or intimidation, including conditions as to the route of the **procession** or prohibiting it from entering any public place specified in the directions.

# Section 54 – 56 od the Bill

## Amend ss.12-14 of the Public Order Act 1986

(2A) For the purposes of subsection (1)(ab)(i), the noise generated by persons taking part in a public procession may have a relevant impact on persons in the vicinity of the procession if—

(a) it may result in the intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity, or

(b) it may cause such persons to suffer **serious unease**, alarm or distress.

(2B) In considering for the purposes of subsection (1)(ab)(ii) whether the noise generated by persons taking part in a public procession may have a significant impact on persons in the vicinity of the procession, the senior police officer must have regard to—

(a) the likely number of persons of the kind mentioned in paragraph (a) of subsection (2A) who may experience an impact of the kind mentioned in paragraph (a) or (b) that subsection,

(b) the likely duration of that impact on such persons, and

(c) the likely intensity of that impact on such persons.

## Section 54 – 56 of the Bill

### Amend ss.12-14 of the Public Order Act 1986

(12) The Secretary of State may **by regulations** make provision about the meaning for the purposes of this section of—

- (a) serious disruption to the activities of an organisation which are carried on in the vicinity of a public procession, or
- (b) serious disruption to the life of the community.

(13) Regulations under subsection (12) may, in particular—

- (a) define any aspect of an expression mentioned in subsection (12)(a) or (b) for the purposes of this section;
- (b) give examples of cases in which a public procession is or is not to be treated as resulting in—
  - (i) serious disruption to the activities of an organisation which are carried on in the vicinity of the procession, or
  - (ii) serious disruption to the life of the community.



# Section 54 – 56 of the Bill

## Amend ss.12 14 of the Public Order Act 1986

**Offences under section 12(4) and s.14(4) "Organisers" and s.12(5) and 14(5) "participants" are all amended by s.56 of the Bill.**

(5) Subject to subsection (5A), a person ~~A person~~ who takes part in a public procession and ~~knowingly~~ fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5A) A person is guilty of an offence under subsection (4) or (5) only if—

(a) in the case of a public procession in England and Wales, at the time the person fails to comply with the condition the person knows **or ought to know** that the condition has been imposed;

(b) in the case of a public procession in Scotland, the person knowingly fails to comply with the condition.

“This measure will close a loophole which some protesters exploit. Some will cover their ears and tear up written conditions handed to them by the police so that they are likely to evade conviction for breaching conditions on a protest as the prosecution have to prove that the person “knowingly fails to comply with a condition imposed”. The Bill will change the threshold for the offence so that it is committed where a person “knows or ought to have known” that the condition has been imposed”

Fact Sheet – Police, Crime, Sentencing and Courts Bill 2021 –

<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-protest-powers-factsheet>

# Section 54 – 56 of the Bill

## Amend ss.12-14 of the Public Order Act 1986

- Section 56 of the PCSC Bill
  - Maximum sentence increased for an organiser from 3 months to 6 months.
  - Maximum sentence increased for a participant from £1,000 fine to £2,500 fine

# Section 60 of the Bill Creates s.14ZA of the Public Order Act 1986

## **14ZA Imposing conditions on one-person protests**

(1) Subsection (2) applies if the senior police officer, having regard to the time or place at which and the circumstances in which any one-person protest in England and Wales is being carried on or is intended to be carried on, reasonably believes—

(a) that the noise generated by the person carrying on the protest may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the protest,

or

(b) that—

(i) the noise generated by the person carrying on the protest may have a relevant impact on persons in the vicinity of the protest, and

(ii) that impact may be significant.

# Section 60 of the Bill Creates s.14ZA of the Public Order Act 1986

(4) In this section “one-person protest” means a protest which, at any one time, is carried on by one person in a public place.

(6) For the purposes of subsection (1)(b)(i), the noise generated by a person carrying on a one-person protest may have a relevant impact on persons in the vicinity of the protest if—

- (a) it may result in the intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity, or
- (b) it may cause such persons to suffer serious unease, alarm or distress.

Maximum sentence:

£2,500 for failing to comply with a condition if knew or ought to have known of the condition.

Six months for inciting someone not to comply with a condition!

# Section 57 amends Section 142A-143 of the Police Reform and Social Responsibility Act 2011

142A Other **controlled areas** in vicinity of the Palace of Westminster

- (1) For the purposes of this Part, the “Palace of Westminster controlled area” means the area of land in the City of Westminster that is comprised in—
  - (a) the highways in the postal district SW1 known as—
    - (i) Bridge Street,
    - (ia) Canon Row,
    - (ib) Parliament Street,
    - (ic) Derby Gate,
    - (id) Parliament Square,
    - (ii) St Margaret's Street, and
    - (iii) Abingdon Street,
  - (aa) so much of the highway in the postal district SW1 known as Victoria Embankment as lies between the highway in that district known as Bridge Street and the highway in that district known as Richmond Terrace,
  - (a) so much of the highway in the postal district SW1 known as Great College Street as immediately adjoins Abingdon Street Garden,
  - (b) Old Palace Yard,
  - (c) Abingdon Street Garden (and its pathways), and
  - (d) Victoria Tower Gardens.

# Section 57 amends Section 142A-143 of the Police Reform and Social Responsibility Act 2011

142A Other controlled areas in vicinity of the Palace of Westminster

(1A) A reference to a highway in subsection (1)(a) or (aa) includes any land immediately adjoining that highway and to which the public have or are permitted access.

# Section 57 amends Section 142A-143 of the Police Reform and Social Responsibility Act 2011

## **143 Prohibited activities in controlled area of Parliament Square or in Palace of Westminster controlled area**

- (2) For the purposes of this Part, a “prohibited activity” is any of the following—
- (a) operating any amplified noise equipment in the controlled area of Parliament Square or in the Palace of Westminster controlled area;
  - (b) erecting or keeping erected in the controlled area of Parliament Square—
    - (i) any tent, or
    - (ii) any other structure that is designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping or staying in a place for any period;
  - (c) using any tent or other such structure in the controlled area of Parliament Square for the purpose of sleeping or staying in that area;
  - (d) placing or keeping in place in the controlled area of Parliament Square any sleeping equipment with a view to its use (whether or not by the person placing it or keeping it in place) for the purpose of sleeping overnight in that area;
  - (e) using any sleeping equipment in the controlled area of Parliament Square for the purpose of sleeping overnight in that area.
  - (f) obstructing, by the use of any item or otherwise, the passage of a vehicle of any description into or out of an entrance into or exit from the Parliamentary Estate, where that entrance or exit is within, or adjoins, the Palace of Westminster controlled area.



# Section 57 amends Section 142A-143 of the Police Reform and Social Responsibility Act 2011

## **143 Prohibited activities in controlled area of Parliament Square or in Palace of Westminster controlled area**

(4A) In subsection (2)(f) the reference to obstructing the passage of a vehicle includes making the passage of a vehicle more difficult.

# Section 59 puts the offence of public nuisance on a statutory footing

## **59 Intentionally or recklessly causing public nuisance**

(1) A person commits an offence if—

(a) the person—

(i) does an act, or

(ii) omits to do an act that they are required to do by any enactment or rule of law,

(b) the person's act or omission—

(i) causes serious harm to the public or a section of the public, or

(ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and

(c) the person intends that their act or omission will have a consequence mentioned in paragraph

(b) or is reckless as to whether it will have such a consequence.

(2) For the purposes of subsection (1) an act or omission causes serious harm to a person if, as a result, the person—

(a) suffers death, personal injury or disease,

(b) suffers loss of, or damage to, property,

(c) suffers serious distress, serious annoyance, serious inconvenience or serious loss of amenity, or

(d) is put at risk of suffering anything mentioned in paragraphs (a) to (c).

(3) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act or omission mentioned in paragraph (a) of that subsection.

## Section 59 puts the offence of public nuisance on a statutory footing

### Section 59

(4) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both.

[Common Law offence maximum sentence was life imprisonment/unlimited fine]

Law Commission 2015 Paper -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/438194/50076\\_Law\\_Commission\\_HC\\_213\\_bookmark.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438194/50076_Law_Commission_HC_213_bookmark.pdf)

**People's rights through justice**

# Thank you

020 7993 7600

info@gclaw.co.uk

@gardencourtlaw



GARDEN COURT CHAMBERS

---