

## Climate protest and conscientious motivation after *R v Hallam*

June 2026

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### Introduction

1. The right to protest occupies an important place within the constitutional traditions of the United Kingdom. Although not absolute, peaceful protest has long been recognised as a legitimate means by which citizens may express dissent, challenge government policy, and seek political and social change. The law has therefore been required to strike a careful balance between maintaining public order and respecting the democratic value of conscientious opposition. That tension is particularly acute where protest involves deliberate law-breaking undertaken not for personal gain, but as an expression of deeply held moral or political conviction.
2. More than two decades ago, in *R v Jones (Margaret) and others*, Lord Hoffmann captured this tradition in terms that continue to resonate:

*“Civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in the cases which came before them exemplifies their sensitivity to these conventions.”<sup>1</sup> (emphasis added)*

3. Lord Hoffmann’s observations recognised both the legitimacy of conscientious protest and the existence of a longstanding accommodation between protesters, courts, and law-enforcement authorities. Protesters may be motivated by conscience, but they remain subject to the law; equally, the criminal justice system has traditionally taken account of conscientious motivation when determining the appropriate response to offending committed in the course of protest.
4. In *R v Hallam and Others*,<sup>2</sup> the Court of Appeal heard the sixteen joined applications for leave to appeal against sentence arising from Just Stop Oil protest cases (the M25 Conspiracy Case, the M25 Gantry Climbers Case, the Thurrock Tunnels Case, and the Sunflowers Case), the appellants having been sentenced for offences committed between August and November 2022. It was not disputed that each appellant had been motivated by a conscientious desire to communicate their views about the appropriate response to climate change.<sup>3</sup> Drawing on its earlier decision in *R v Trowland*,<sup>4</sup> the Court held that conscientious motivation is a factor relevant to sentencing in every such case and that it would be an error to exclude it from the sentencing exercise altogether;<sup>5</sup> that it falls most logically to be addressed in the assessment of

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<sup>1</sup> *R v Jones (Margaret)* [2006] UKHL 16 (per Lord Hoffmann at [89]).

<sup>2</sup> *R v Hallam and Others* [2025] EWCA Crim 199.

<sup>3</sup> *Ibid*, at [2] and [25].

<sup>4</sup> *R v Trowland* [2023] EWCA Crim 919.

<sup>5</sup> *Hallam*, at [26(i)].

culpability rather than as a discrete head of mitigation;<sup>6</sup> that it does not, however, preclude a finding of high culpability, its weight diminishing as the disproportionality of the offending increases;<sup>7</sup> and that Articles 10 and 11 of the European Convention on Human Rights (“**ECHR**”) remain engaged and must be considered at the sentencing stage, even where the conduct involved criminal trespass, though trespass significantly weakens the weight those protections carry.<sup>8</sup>

5. The Court found the sentences imposed in the M25 Conspiracy Case manifestly excessive, the sentencing judge having excluded conscientious motivation and the Convention from the exercise entirely, and reduced all five.<sup>9</sup> In the Thurrock Tunnels and M25 Gantry Climbers cases, where the sentencing judges had engaged with those considerations albeit according them limited weight, the sentences were upheld.<sup>10</sup> The Sunflowers Case sentencing judge had made the same error of excluding motivation and the ECHR, but the sentences nonetheless fell within the applicable guideline range and were not manifestly excessive; those appeals were also dismissed.<sup>11</sup>
6. The decision now stands as the leading domestic authority at Court of Appeal level on how the criminal law treats conscientious motivation, and, following the Supreme Court’s refusal of permission to appeal on 8 October 2025, its framework remains the governing domestic position unless and until revisited by a higher court or altered by legislation.
7. The question this article considers is what that framework secures for the conscientious climate protester. The answer is a good deal less than the headline reductions in sentence suggested, and recent developments have narrowed it further still.
8. The context is one of intensifying enforcement. Analysis by Global Witness records that around 7,000 climate activists have been arrested in the UK since 2019, and that between 2022 and mid-2025 peaceful climate protesters in London were charged at over three times the rate of far-right protesters arrested in the same period.<sup>12</sup>
9. Against that backdrop, the law has developed along two tracks which pull against one another. At the sentencing stage, *Hallam* establishes conscientious motivation as a factor which the court must consider where it is properly engaged by the facts. At the trial stage, the defences through which climate defendants once secured acquittals have been progressively closed. The conscientious protester is, in consequence, increasingly likely to be convicted, while remaining entitled to have their conscientious motivations taken into account on sentence.

### **Motivation at the sentencing stage**

10. *Trowland* concerned two Just Stop Oil protesters who climbed the Queen Elizabeth II bridge over the M25 on 17 October 2022, suspending themselves in hammocks for some 36 hours.<sup>13</sup>

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<sup>6</sup> Ibid, at [15] and [26(ii)], applying *Trowland* at [55].

<sup>7</sup> Ibid at [26(ii)] and [81], applying *Trowland* at [50].

<sup>8</sup> Ibid, at [36], [55] and [82].

<sup>9</sup> Ibid, at [81]-[82] and [85]-[99].

<sup>10</sup> Ibid, at [125] (M25 Gantry Climbers), [149] (Thurrock Tunnels). One M25 Gantry Climbers sentence was reduced on other grounds: [132]-[134]. See also [191(ii)-(iii)].

<sup>11</sup> Ibid, at [177] (the judge erred in treating conscientious motivation and Articles 10 and 11 ECHR as irrelevant), [186] and [190]. See also [191(iv)].

<sup>12</sup> Global Witness, [UK climate activists charged at three times the rate of far-right agitators](#), 20 November 2025;

Global Witness, [How criminalisation harms climate movements and defenders](#), 23 October 2025.

<sup>13</sup> *Trowland*, at [1].

The bridge was closed for approximately 40 hours; over half a million vehicles were delayed and the economic impact was estimated at around £917,000.<sup>14</sup> Both protesters had previous convictions for, or were on bail at the time for, protest-related offending.<sup>15</sup> They were sentenced to three years and two years seven months' imprisonment respectively.<sup>16</sup> On appeal, the Court of Appeal established the framework that has since governed sentencing in non-violent protest cases: conscientious motivation is relevant to sentencing and falls most logically to be addressed in the assessment of culpability rather than as a free-standing head of mitigation;<sup>17</sup> Articles 10 and 11 are relevant to sentence and particular caution is required before imposing custody for non-violent protest;<sup>18</sup> but the more disproportionate or extreme the action, the less obvious the case for reduced culpability, and whether immediate custody is warranted will be highly fact-sensitive.<sup>19</sup> The sentences were described as severe but upheld as not manifestly excessive and not disproportionate.<sup>20</sup>

11. *Hallam* did not depart from that framework; rather it corrected its misapplication, most acutely in the M25 Conspiracy and Sunflowers cases, where the same sentencing judge, HHJ Hehir, had excluded conscientious motivation and the Convention from the exercise entirely,<sup>21</sup> while cautioning that treating the *Trowland* sentence of three years as a benchmark risked undesirable and unwarranted sentence inflation.<sup>22</sup> Three holdings merit attention.
12. **First**, and consistently with *Trowland*, conscientious motivation falls to be addressed in the assessment of culpability rather than treated as a discrete head of mitigation.<sup>23</sup> The distinction is of real practical consequence. Culpability is part of the assessment of seriousness that fixes the provisional sentence, whereas mitigation is applied at a later stage, so locating motivation in culpability weaves it into the gravity of the offending rather than leaving it as a discount at the end. It is worth observing that this approach sits comfortably with a strand of academic argument that the wrongfulness of conscientious climate protest is itself diminished. Writing on the climate necessity defence, for example, Ivó Coca-Vila has argued that the chilling-effect doctrine and the principle of proportionality both speak in favour of mitigating punishment for offences bound up with the exercise of fundamental political rights, and that the wrongdoing of climate protesters is in such cases less, even where they are fully responsible.<sup>24</sup>
13. **Second**, conscientious motivation does not preclude a finding of high culpability: “*the more disproportionate or extreme the action taken by the protester, the less obvious is the justification for reduced culpability and more lenient sentencing.*”<sup>25</sup> That is, however, save in the most exceptional and extreme case, a matter of degree rather than a ground for excluding conscientious motivation from the exercise altogether.<sup>26</sup> Even in *Trowland*, culpability was materially reduced by the presence of conscientious motivation.<sup>27</sup> The error of the sentencing judge in the M25

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<sup>14</sup> *Ibid*, at [9] and [12].

<sup>15</sup> *Ibid*, at [1] and [15]-[17].

<sup>16</sup> *Ibid*, at [2].

<sup>17</sup> *Ibid*, at [50] and [55].

<sup>18</sup> *Ibid*, at [49], citing *Taranenko v Russia* (2014) 37 BHRC 285 at [87] and *Kudrevičius v Lithuania* (2016) 62 EHRR 34 at [146].

<sup>19</sup> *Ibid*, at [50]-[51].

<sup>20</sup> *Ibid*, at [90]-[91].

<sup>21</sup> *Hallam* at [81]-[82] (M25 Conspiracy Case) and [175], [177] (Sunflowers Case).

<sup>22</sup> *Ibid*, at [7(iv)].

<sup>23</sup> *Ibid*, at [15] and [26(ii)], applying *Trowland* at [55].

<sup>24</sup> Ivó Coca-Vila, ‘Punishing the Last Citizens? On the Climate Necessity Defence’ (2023) Res Publica. Available online at: [https://pure.mpg.de/rest/items/item\\_3551839\\_2/component/file\\_3551840/content](https://pure.mpg.de/rest/items/item_3551839_2/component/file_3551840/content).

<sup>25</sup> *Hallam* at [26(ii)] and [81]; *Trowland* at [50].

<sup>26</sup> *Ibid*, at [81].

<sup>27</sup> *Ibid*; *Trowland* at [77].

Conspiracy Case, as one of the four cases before the Court of Appeal in *Hallam* arising from the organised climbing of gantries across the M25 over four successive days in November 2022,<sup>28</sup> lay precisely in taking no account of motivation, or of Articles 10 and 11 ECHR, at all.<sup>29</sup>

14. **Third**, a judge is not required to identify the amount by which a custodial term has been reduced to reflect conscientious motivation; there is no analogy with the quantified discount for a guilty plea.<sup>30</sup> The practical effect is that the extent to which motivation has been taken into account is largely opaque, and correspondingly difficult to challenge on appeal: an appellant may only be able to show that motivation was ignored altogether, or that the resulting sentence was manifestly excessive.
15. As for the ECHR, *Hallam* confirmed that the fact a proportionality exercise had been conducted in relation to the prosecution did not displace the need to assess proportionality afresh at the sentencing stage.<sup>31</sup> Criminal trespass significantly weakens, but does not remove, the protection of Articles 10 and 11.<sup>32</sup> On this point, the Court distinguished *DPP v Cuciurean*, in which the Divisional Court had held that proof of the ingredients of aggravated trespass contrary to section 68 of the Criminal Justice and Public Order Act 1994 was sufficient in itself to render a conviction proportionate, without any separate proportionality assessment, but had left open whether Articles 10 and 11 were engaged at all where a protestor trespassed on land to which the public had no access.<sup>33</sup> The Court of Appeal in *Hallam* treated *Cuciurean* as not having determined the question of engagement and held that, on the facts before it, the appellants' acts of trespass did not take them outside Articles 10 and 11, even though those protections were significantly weakened.<sup>34</sup>
16. Separately, the Court corrected the approach taken in the Sunflowers Case (as one of the four cases before it), arising from the actions of two Just Stop Oil activists who threw soup at Van Gogh's painting 'Sunflowers' in the National Gallery on 14 October 2022.<sup>35</sup> The sentencing judge had held that Articles 10 and 11 were not engaged at all, on two grounds: that the appellants' actions were violent, and that the damage was significant.<sup>36</sup> The Court of Appeal disagreed on both. The actions, while shocking, were not violent,<sup>37</sup> and significant damage does not in itself disengage Articles 10 and 11. The point established in *Attorney General's Reference (No. 1 of 2022)*, concerning the prosecution for criminal damage of protestors who toppled the statue of Edward Colston in Bristol, was that significant damage goes to the proportionality of conviction, not to the prior question of whether the Convention is engaged at all.<sup>38</sup> The judge in the Sunflowers Case had conflated two analytical steps. Once the error was corrected,

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<sup>28</sup> Ibid, at [5].

<sup>29</sup> Ibid, at [81]-[82].

<sup>30</sup> Ibid, at [26(iii)], citing *R v Ratchliffe* [2024] EWCA Crim 1498 at [81].

<sup>31</sup> *Hallam* at [55].

<sup>32</sup> Ibid, at [36].

<sup>33</sup> *DPP v Cuciurean* [2022] EWHC 736 (Admin) at [73], [81] and [89] (proof of the s.68 ingredients renders a conviction proportionate); [50] (whether Articles 10 and 11 were engaged on such facts was "highly arguable" but was not determined).

<sup>34</sup> *Hallam* at [35]-[36].

<sup>35</sup> Ibid, at [4].

<sup>36</sup> Ibid, at [37].

<sup>37</sup> Ibid, at [39]-[41].

<sup>38</sup> *Attorney General's Reference (No. 1 of 2022)* [2022] EWCA Crim 1259 at [115] and [120]: prosecution and conviction for causing significant damage during protest would fall outside Convention protection either because the conduct was violent or not peaceful, or (even if theoretically peaceful) because conviction would clearly be proportionate. The extent of damage was thus relevant to proportionality, not to engagement. See *Hallam* at [38]: "all that was being said in *Colston* was that the extent of damage was relevant to the proportionality of any conviction."

Articles 10 and 11 were engaged, albeit significantly weakened.<sup>39</sup> As other practitioners have observed, the courts must balance the deterrence of disruptive protest against the conscientious motives of those acting for a cause many regard as existential.<sup>40</sup>

### The narrowing of the climate defences

17. While the sentencing track has entrenched motivation as an important part of the process, the trial track has moved decisively in the opposite direction. The shift is best appreciated against the history of the climate jury acquittal. As the Grantham Research Institute has observed,<sup>41</sup> climate defendants once enjoyed real success in placing the urgency of the climate crisis before juries: the “Kingsnorth Six” were acquitted in 2008 of criminal damage at a coal-fired power station after expert evidence on the urgency of climate change;<sup>42</sup> and the “Shell Six” were later acquitted by a jury even though a full necessity defence was denied.<sup>43</sup> These were, in substance, jury verdicts rather than the vindication of any developed climate-specific defence in law; but their practical effect was that conscientious climate argument could reach the tribunal of fact. That prospect has since narrowed in England and Wales.
18. In *Attorney General’s Reference (No.1 of 2023)*, the Court of Appeal construed the lawful excuse defence which may arise under section 5(2)(a) of the Criminal Damage Act 1971. That provision treats a defendant as having a lawful excuse if they believed that the owner would have consented to the damage had the owner known of “*the destruction or damage and its circumstances.*” The Court held that that the possessive pronoun “*its*” is central: the circumstances must bear a direct nexus to the damage itself.<sup>44</sup> The merits, urgency or importance of the cause about which the defendant is protesting, any perceived need to draw attention to it, and the evidence about the facts or effects of climate change, do not constitute those circumstances and are inadmissible in relation to the defence.<sup>45</sup> It should be acknowledged that the Court sought to stress that it was applying ordinary principles of statutory construction and imposing no restriction special to protest cases; the fact that a case involves protest cannot affect the proper construction of the subsection.<sup>46</sup> That distinction may matter doctrinally; for the climate defendant who can no longer place the urgency of the crisis before a jury, the practical effect is the same.
19. The companion defence under section 5(2)(b), concerning property in immediate need of protection, has fared no better. In *DPP v Ditchfield*, an Extinction Rebellion protestor spray-painted the offices of Cambridgeshire County Council in an effort to pressure the local authority into taking action to protect property from the effects of climate change. The Divisional Court held that an act whose purpose is to put pressure on a public authority to take protective action is not capable of conferring the immediate protection the subsection requires;<sup>47</sup> to hold otherwise, it said, would give *carte blanche* to the pursuit of politics by means of damage to public or private property.<sup>48</sup>

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<sup>39</sup> *Hallam* at [42].

<sup>40</sup> Róisín Finnegan, Six Pump Court, [The recent sentencing of climate protestors](#), 9 August 2024.

<sup>41</sup> LSE Grantham Research Institute, [The emerging use of the law as a vehicle for climate protest](#), 18 May 2021.

<sup>42</sup> The Guardian, [Not guilty: the Greenpeace activists who used climate change as a legal defence](#), 11 September 2008.

<sup>43</sup> BBC, [Extinction Rebellion: Jury acquits protests despite judge’s direction](#), 23 April 2021.

<sup>44</sup> *Attorney General’s Reference (No.1 of 2023)* [2024] EWCA Crim 243 at [44] and [46].

<sup>45</sup> *Ibid*, at [48] and [65(i)].

<sup>46</sup> *Ibid*, at [38] and [50].

<sup>47</sup> *DPP v Ditchfield* [2021] EWHC 1090 (Admin) at [19].

<sup>48</sup> *Ibid*, at [23].

20. For aggravated trespass, and for interference with key national infrastructure under section 7 of the Public Order Act 2023, proportionality has been held to be resolved within the structure of the offence itself, rather than through a separate free-standing assessment for the jury in every case. The Divisional Court in *DPP v Cuciuorean* held that proof of the ingredients of section 68 of the Criminal Justice and Public Order Act 1994 renders a conviction proportionate, without more.<sup>49</sup> In *R v Sarti*, the Court of Appeal, applying the structured approach in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill*,<sup>50</sup> held that once the ingredients of the section 7 offence are made out, the “reasonable excuse” defence in section 7(2)(a) does not require a court to consider whether a conviction would be a proportionate interference with the defendant’s Articles 10 or 11 rights.<sup>51</sup> Both decisions are to be contrasted with *DPP v Ziegler*, where the offence of wilful obstruction of the highway under section 137 of the Highways Act 1980, being subject to a “lawful excuse” defence, was held to require an individualised proportionality assessment – the section 137 offence being, as the Court noted in *Sarti*, materially wider than section 7 in the roads to which it applies.<sup>52</sup> The net effect is that for the offences most commonly charged against climate protestors, aggravated trespass and interference with national infrastructure, proportionality is no longer a live question that the defendant can contest at trial.

### **Questions for the climate movement**

21. For the conscientious climate defendant, the sentencing stage is now the principal arena in which motivation carries any weight. That makes the *Hallam* premise, that conscientious motivation may reduce culpability, all the more important, and all the more vulnerable to recent developments which suggest that the same motivation may, under a different route, be treated not as mitigating but as the foundation of a terrorism finding.
22. The direction of travel is apparent in the litigation concerning the proscription of terrorist organisations. In *R (Ammori) v Secretary of State for the Home Department*, the Divisional Court held the proscription of Palestine Action to be a disproportionate interference with Articles 10 and 11, and contrary to the Home Secretary’s own policy.<sup>53</sup> That finding did not survive on appeal. On 15 June 2026, a five-judge Court of Appeal led by Lady Chief Justice Baroness Carr allowed the Home Secretary’s appeal, holding that the proscription was “justified and proportionate” and that it was “a fundamental mistake to overlook the fact that Palestine Action overtly promoted unlawful violence amounting to terrorism.”<sup>54</sup> The Divisional Court’s proportionality reasoning, which had offered some reassurance that the courts would check the outer boundary of the state’s response to direct-action protest, was set aside. Ms Ammori has indicated she will seek leave to appeal to the Supreme Court and, if necessary, to the European Court of Human Rights.
23. On 12 June 2026, just three days before the Court of Appeal decision in *Ammori*, Mr Justice Johnson sentenced four Palestine Action activists (“**the Filton Four**”) for criminal damage arising from a raid on the Elbit Systems factory near Bristol. They had not been charged with any terrorism offence. Nonetheless, invoking section 69 of the Sentencing Act 2020, the judge found that the offending had a “terrorist connection” within the meaning of section 1 of the

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<sup>49</sup> *Cuciuorean* at [73], [81] and [89] (aggravated trespass, s.68 Criminal Justice and Public Order Act 1994 proof of the statutory ingredients will ordinarily result in a proportionate conviction, with no separate proportionality assessment), applying the two-category analysis in *James v DPP* [2016] 1 WLR 2118.

<sup>50</sup> *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32; [2023] AC 505.

<sup>51</sup> *R v Sarti* [2025] EWCA Crim 61 at [75]-[77]; see also *Hallam* at [183].

<sup>52</sup> *DPP v Ziegler* [2021] UKSC 23; [2022] AC 408 (s.137 Highways Act 1980); *Sarti* at [73].

<sup>53</sup> *R (Ammori) v Secretary of State for the Home Department* [2026] EWHC 292 (Admin).

<sup>54</sup> *Secretary of State for the Home Department v Ammori* [2026] EWCA Civ 721 at [175] and [205].

Terrorism Act 2000, on the basis that the damage was serious, was designed to intimidate a section of the public and to influence government, and was directed to the advancement of a political or ideological cause.<sup>55</sup> As a consequence, the judge imposed materially longer custodial terms (the longest in excess of seven years), restricted release and terrorism notification requirements for a period following release. It appears to be the first occasion on which direct-action protesters convicted of an ordinary criminal offence have been sentenced on a terrorist footing.<sup>56</sup>

24. The significance for climate activism of treating direct action as terrorism under section 69 lies in its treatment of a political or ideological purpose. Under *Hallam*, conscientious political motivation may reduce culpability. Under section 1 of the Terrorism Act 2000, the advancement of a political, religious, racial or ideological cause is instead a constituent element of terrorism, and so may, by way of section 69, operate as an aggravating factor if the other statutory elements are met.
25. As Amnesty International have stated, the section 69 route misconstrues conscientious motivation, treating as an aggravating feature that which the sentencing case law treats as reducing culpability.<sup>57</sup> The conscientious motivation which *Hallam* obliges a court to weigh can therefore, on this approach, become part of the foundation for the gravest available characterisation.
26. It would be wrong to overstate the immediate read-across to climate protest. No climate organisation has been proscribed, and the proscription under sections 11 and 12 of the Terrorism Act 2000 do not presently touch groups such as Just Stop Oil or Extinction Rebellion. But the terrorist-connection route under section 69 is conceptually distinct from proscription and does not depend on it. The actions of the Filton Four pre-dated the decision to proscribe Palestine Action by almost a year,<sup>58</sup> the convictions (save for one GBH without intent) were for ordinary criminal damage, and the reported finding turned on the section 1 definition. Since the Counter-Terrorism and Sentencing Act 2021, the reach of section 69 has been broad: a terrorist-connection finding may now be made for any serious criminal offence carrying more than two years' imprisonment, provided the offence is not itself already classified as a terrorism offence.<sup>59</sup> Criminal damage and the section 78 public-nuisance offence, both carrying up to ten years, are on their face within scope.
27. Climate direct action has, on occasion, included serious property damage (broken windows at corporate headquarters, damaged fuel pumps, the Thurrock tunnelling at issue in *Hallam* itself) capable, at least in principle, of engaging the “*serious damage to property*” limb in section 1(2) of the 2000 Act. Where such damage is also designed to influence the government, and is undertaken to advance an ideological cause, the statutory definition may on its face be engaged, subject to the whims of prosecutorial decision-making and judicial findings on the facts.

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<sup>55</sup> Sentencing Act 2020, s.69(3); Terrorism Act 2000, s.1.

<sup>56</sup> BBC, [Palestine Action activists jailed over factory raid](#), 12 June 2026.

<sup>57</sup> Amnesty International, [UK: Terrorist sentence for Palestine activists marks “dangerous” move against right to protest](#), 13 June 2026.

<sup>58</sup> The direct action was carried out on 6 August 2024, but the proscription of Palestine Action came into force on 5 July 2025. The decision to proscribe came after the RAF Brize Norton break-in on 20 June 2025. See Explanatory memorandum to the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025, s.4.1. The proscription decision has been widely condemned by human rights experts. See OHCHR, [UK: Palestine Action ban ‘disturbing’ misuse of UK counter-terrorism legislation, Türk warns](#), 25 July 2025.

<sup>59</sup> Counter-Terrorism and Sentencing Act 2021, s.1, amending Sentencing Act 2020, s.69 (inserting s.69(4)) and inserting Sch. A1.

28. What in practice keeps the bulk of climate protest beyond the reach of section 69 is, at present, not a climate-specific exemption nor the absence of proscription, but two contingent matters: first, that obstruction and disruption, the staple of recent climate protest, involve neither violence nor serious property damage and so may fall outside section 1(2); and second, prosecutorial restraint. Neither is a structural protection. The boundary between lawful protest and terrorism-connected offending is, on this analysis, drawn not by statute but by prosecutorial choice. The selectivity of that choice is not hypothetical: as events in Belfast this month have demonstrated, serious violence against persons may go uncharged under the terrorism legislation while property damage by conscientiously motivated protestors is cast as terrorism.<sup>60</sup> That should concern anyone who values legal certainty in the exercise of fundamental rights.
29. The same act of conscientious property damage may therefore be addressed through *Hallam*, where motivation tempers the sentence, or through section 69, where it hardens the offending into terrorism; and which course is taken is determined not by the conduct but by the characterisation placed upon its purpose. No appellate court has yet considered how these two frameworks interact, and the tension between them is unsustainable: a system in which the same motivation is treated as reducing culpability under one route and as a constituent of the gravest available characterisation under the other demands reconciliation at the appellate level. If and when the Filton Four sentences are appealed, the Court of Appeal will have the opportunity, and a pressing need, to address whether the *Hallam* principles have any application within a section 69 context, or whether the terrorist-connection route operates as a wholly separate track that displaces them.

### **Strasbourg, and the chilling effect**

30. Two further points bear on the durability of the *Hallam* framework.
31. The first is its relationship with the Convention jurisprudence. The domestic courts proceeded in *Hallam* on the footing that, as was common ground between the parties there, proper application of the principles in *Trowland* and *Hallam* will satisfy the ECHR.<sup>61</sup> Yet Strasbourg has consistently emphasised that particular caution is required before a custodial sentence is imposed for non-violent protest,<sup>62</sup> and in every case in which the Strasbourg Court has found the prosecution of a non-violent protester to be proportionate, the resulting detention was limited to a few days or was suspended.<sup>63</sup>
32. Measured against that, the multi-year immediate terms now being imposed in protest cases represent a marked departure. Sentence is itself a “restriction” for Convention purposes,<sup>64</sup> and it is at the level of sentence length, and now, potentially, of terrorist labelling, that any divergence would be most acute. The refusal of permission to appeal to the Supreme Court in *Hallam* fixes the domestic position; it does not resolve the Convention question.

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<sup>60</sup> The Guardian, [The Belfast riots, Palestine Action protests. What is terrorism now – and why the hypocrisy?](#), 17 June 2026.

<sup>61</sup> *Hallam* at [7(iii)] and [82] (the parties agreed, and the Court proceeded on the basis that the common law and the Convention are “in step”).

<sup>62</sup> *Ibid*, at [14], explaining *Trowland* at [49] citing *Taranenko* at [87], *Kudrevičius* at [146], and *R v Richard Roberts and others* [2018] EWCA Crim 2739 at [43] on the particular caution required before custodial sentences for non-violent protest.

<sup>63</sup> Archbold, *Criminal Pleading, Evidence and Practice* (2026 ed.) at [16-166], reviewing the Strasbourg case law in *Taranenko* and *Kudrevičius*.

<sup>64</sup> *Kudrevičius* at [172]-[174] and [178]; *Ziegler* at [57]; and see *Hallam* at [30(v)].

33. The second is the chilling effect. On the available evidence, the severity of recent sentencing has already reshaped the movement: Global Witness records that mass mobilisation for direct-action climate protest has subsided, with groups such as Just Stop Oil standing down after years of mounting threats of arrest and imprisonment.<sup>65</sup> The UN Special Rapporteur on Environmental Defenders has warned repeatedly of a crackdown on environmental defenders in the United Kingdom and of a chilling effect on peaceful protest,<sup>66</sup> a perspective which, as *Hallam* held, cannot bear on sentence, the Aarhus Convention, which protects the right to a healthy environment through access to information, public participation and access to justice in environmental matters, being unincorporated.<sup>67</sup>

## **Conclusion**

34. For those advising climate defendants, the practical points are these. At trial, the substantive defences are now very limited, although each case will of course turn on its own facts. At sentencing, *Hallam* is to be deployed as an argument going to culpability. Counsel should make detailed submissions on the nature and basis of the defendant's conscientious motivation. If the judge fails to engage, or offers no more than a formulaic acknowledgement, this may provide a basis for an appeal, as in the M25 Conspiracy Case.

35. The courts continue to pay homage to the long and honourable history of conscientious objection.<sup>68</sup> *Hallam*, read alongside the authorities that underpin it, shows how a legal system may affirm that tradition at the level of punishment while narrowing it at the level of guilt. The Court of Appeal's decision in *Ammoni*, upholding the proscription, and the sentencing of the Filton Four under section 69 three days earlier, together raise the further possibility that, for the climate protester as much as any other, the law may now move beyond mere narrowing and towards recasting such politically motivated direct action through a national security lens.

36. The framework built to address climate protest has not been dismantled. It has been redirected, extended, and applied with a selectivity that the law itself does not explain. Just as the science underlying climate protest grows more insistent by the year, the room for effective lawful dissent grows thinner by the judgment.

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<sup>65</sup> Global Witness, [Policing protest: UK's peaceful climate activists charged at three times the rate of far-right agitators](#), 20 November 2025.

<sup>66</sup> UN Special Rapporteur on environmental defenders under the Aarhus Convention, [Statement regarding the four-year prison sentence imposed on Mr Daniel Shaw for his involvement in peaceful environmental protest in the United Kingdom](#) (Ref: ACSR/C/2024/26, 18 July 2024); [Statement regarding the criminal prosecution of Mr Daniel Shaw for his involvement in peaceful environmental protest in the United Kingdom of Great Britain and Northern Ireland](#) (Ref: ACSR/C/2024/26, 24 June 2024).

<sup>67</sup> *Hallam* at [49]-[50].

<sup>68</sup> *Jones* at [89] (Lord Hoffmann); cited in *Hallam* at [50].