

Chapter 16: Human rights in the UK: public order and police powers

Problem scenario 1: Public order

Following a vote in the House of Commons, the UK Government decides to increase the tuition fees of students attending English and Welsh universities to £15,000 a year. This decision is met with much unhappiness and marches are planned across Central London, in protest at the decision. During the said marches, the following events occur.

- A group of thirteen individuals plan and launch an attack on two police vans that are parked on the street in Whitehall. They throw bottles, stones, and other objects at the vehicle and also use sledge hammers to smash the windows. Later, at trial, two of the individuals make an agreement with prosecuting authorities whereby their charges are dropped in return for evidence against the remaining eleven protestors.
- One particularly disgruntled student—Don—breaks away from the procession and starts hurling abuse at passers-by, threatening to ‘break their legs’ and ‘smash their faces in’.
- Finally, a group of ten students are sitting on the pavement opposite Downing Street, chanting and waving placards. Amy, one of the group, is holding a sign that says ‘Rob us of a free education and we’ll rob you’. Jane, an elderly tourist, sees this and is distressed. As she hurries past the group, Peter, another protestor, shouts ‘Oi, Granny, give us your money or we’ll mug you’.

Imagine that you have been presented with this scenario and asked to discuss the offences that have been committed by the various protestors, with reference to case law and legislation.

Even before we get to the various statutory provisions, we must consider whether or not a breach of the peace has occurred here. Using Watkins LJ’s words from *R v Howell*,¹ a breach of the peace can be said to occur when an act or a threatened act causes harm to an individual or their property, or is likely to cause harm to that person or their property. On this basis, it could be argued

¹ [1982] QB 416.

that each of the three scenarios in the problem scenario involve a breach of the peace: the group of thirteen individuals attacking the police vans; Don's abuse to passers-by threatening to 'break their legs' and 'smash their faces in'; and Peter's threatened attack on Jane to the effect that he would mug her if she did not give him some money. Each of these scenarios involves either action or threatened action that causes harm or that would be likely to cause harm. As the discussion, below, will show, however, legislative reform in the area of public order has meant that each of these specific offences is more suitably dealt with under statutory provisions. We look at each party in turn.

(1) Thirteen individuals

The thirteen individuals who attacked two police vans by throwing stones and other objects at the vehicle and using sledge hammers to smash the windows could potentially be convicted of committing a riot. As per section 1 of the 1986 Act, there are at least twelve individuals acting violently towards a common purpose (ie destruction of the police van), and it would be a reasonable view to hold that a person of reasonable firmness, present in the vicinity of the police vans, would fear for their safety. On this basis, the individuals could serve as much as ten years in prison or receive a fine.

It is significant, though, that—at trial—two of the protestors have their charges dropped in exchange for evidence against the other eleven individuals. This significance is linked to the number of people allegedly committing the offence; there are now fewer than twelve—the number required for the offence of riot. Relevant to this issue is the case of *R v Mahroof*,² in which only one man was convicted (and two acquitted) of the offence of violent disorder. Whilst, as the Court of Appeal noted, 'there [was] evidence before the jury that there were three people involved in the criminal behaviour', it was not necessarily those listed on the indictment.³ The individual, therefore, was convicted under section 4. Our situation here, however, is slightly different insofar as there would be evidence before the jury that thirteen individuals took part in the attack on the police vans, this evidence also potentially showing that the two individuals whose charges have been dropped were a part of that group. Keeping in mind the words of the Court of Appeal in *Mahroof*, therefore, the jury could still potentially find the eleven individuals guilty of taking part in a riot.

² (1989) 88 Cr App R 317.

³ (1989) 88 Cr App R 317, 321.

(2) Don

Don breaks away from the main march and begins hurling abuse at passers-by, threatening to ‘break their legs’ and ‘smash their faces in’. We are perhaps given insufficient information here. If Don makes these threats towards specific individuals or groups of people, then his words might suffice to bring him within section 4 or 4A of the 1986 Act; that directness being sufficient—with the other particulars—to satisfy those offences. If we interpret his behaviour, however, as general disruption, with these threats being offered to the public generally, then section 5 is more likely to be relevant. Indeed, in *R (on the application of Owusu-Yianoma) v Chief Constable of Leicestershire*,⁴ an individual’s alcohol-fuelled shouts and disruption came within section 5.

(3) Amy and Peter

Amy is holding a sign that says ‘Rob us of a free education and we’ll rob you’. The sign is not necessarily aimed at any specific individual, but is instead designed to convey the message of their demonstration to passers-by generally. On this basis, section 5 of the Public Order Act 1986 contains the most relevant offence. This states that ‘[a] person is guilty of an offence if he—(a) uses threatening or abusive words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby’. Since Amy’s sign includes a threat to rob, it could arguably fall within paragraph (b) of this offence. It is not necessary to show that any individual, walking along Whitehall, was actually harassed, alarmed, or distressed by Amy’s placard, but—pursuant to Treacy LJ’s judgment in *R (on the application of Owusu-Yianoma) v Chief Constable of Leicestershire*—it suffices to show that the sign was displayed within the sight of a person likely to be harassed, alarmed, or distressed. Given that this demonstration was taking place on a busy street, in Central London, it is not inconceivable to think that such an individual would be in the vicinity.

Peter’s actions are more serious than Amy’s. He singles out a passer-by (Jane, who is an elderly tourist) and shouts at her: ‘Oi, Granny, give us your money or we’ll mug you’. On the basis that his words are aimed at a particular individual, these words could bring Peter within the offence contained in section 4 of the Public Order Act 1986. His threatening words are directed at a specific

⁴ [2017] EWHC 576 (Admin).

individual and could be taken as intending to cause Jane to believe that immediate unlawful violence will be used against her.

Problem scenario 2: Police powers

Donald is on his way home from work. Wearing a baggy grey hoodie, black jeans, and blue trainers, he carries a plastic bag from the shop where he works containing some items he bought on his lunch break. To get home, Donald has to walk through a part of town that is notorious for its crime rate and for the presence of drug dealing gangs. Carrying out a routine patrol of the area, PC Smith and WPC Jones catch sight of Donald. Knowing the area and not liking his scruffy appearance, they approach Donald and ask him to stop 'for a chat'. Donald does so, reluctantly. The police officers say to Donald 'We're carrying out a routine patrol of the area and we'd like to search your bag, we have good reason to suspect that you are carrying stolen items'. At this point, Donald becomes aggressive. He pushes the officers out the way and attempts to walk off, refusing the requests to search his bag. Straight away WPC Jones grabs Donald and says, 'You'd better come with us, hadn't you?' When Donald asks why, PC Smith responds, 'I think you know why; you're nicked, mate'.

Once at the police station, Donald is thrown straight away into a cell without any further information. While Donald is in detention, PC Smith and WPC Jones drive to his house. Approaching the door, they hear muffled gunshots and a number of screams. They kick the door in and enter hurriedly, to find a teenage boy (Donald's son) watching an action film on the television. Realising that their suspicions of a violent crime are misplaced, PC Smith and WPC Jones turn to leave. As they do they spot an unmarked bag of DVDs and CDs in the hall, still in the wrappers and with the prices on. Suspecting these to have been stolen, the officers seize the bag and return to the station. It later transpires that the bag of DVDs and CDs were the result of Donald's son's recent trip to the shops.

Imagine that you have been presented with this scenario and asked to critically evaluate the actions of PC Smith and WPC Jones.

There are a number of points for discussion with regard to this scenario. We look at the various issues in turn.

(1) Stop and search

On the facts of the problem scenario as they stand, any reasonable suspicion that PC Smith and WPC Jones have is somewhat questionable. Code A of the Codes of Practice makes clear that ‘there must be an objective basis for that suspicion based on facts, information and/or intelligence which are relevant to the likelihood that the object in question will be found . . . [it] can never be supported on the basis of personal factors’.⁵ Donald is stopped largely on the basis of his appearance, factors which are subjective, rather than objective. Indeed, ‘[a] person’s physical appearance’ is noted in Code A as being a basis on which reasonable suspicion cannot be legitimately founded. There could arguably be grounds, therefore, to question the lawfulness of his stop and search.

One thing we might consider is whether it would make a difference if a fellow police officer had given PC Smith and WPC Jones a tip-off that an individual fitting Donald’s description was walking through the area. The answer to this is yes. Code A also makes clear that if ‘the police have information or intelligence which provides a description of a person suspected of carrying an article for which there is a power to stop and search’,⁶ then this can legitimately form the basis of a reasonable suspicion.

(2) Arrest

Under section 24 of PACE, the police have the power to arrest, without a warrant, anyone they have reasonable grounds for suspecting to have committed an offence. The requirement of reasonable suspicion is, again, notable in this regard. As the judgment in *O’Hara* explains, this is an issue involving both subjective and objective questions. PC Smith and WPC Jones ‘must have formed a genuine suspicion’ in their minds that Donald was carrying a bag of stolen goods, but there must also be objectively reasonable grounds for the suspicion.⁷ It could be argued that PC Smith and WPC Jones have the requisite reasonable suspicion on the basis that Donald starts acting aggressively when a bag-search is mentioned. He also pushes the officers and attempts to walk off, refusing the requests to search his bag. Subjectively, his specific behaviour can be regarded as suspicious, whilst his refusal to show the officers his bag and attempts to walk off might objectively be seen as actions to hide something.

⁵ PACE Codes of Practice, Code A, paras 2.2 and 2.2B.

⁶ *Ibid.*

⁷ [1997] AC 286 at 298.

The main problem with Donald's arrest, however, relates to the requirement in section 28(1) of PACE, which states that 'arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest'. This is supplemented by section 24(3), which adds that 'no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or, as soon as is practicable after, the arrest'. When PC Smith simply tells Donald 'you're nicked, mate', this fails to satisfy the statutory requirement. Donald must be told of the offence of which they suspect him having committed. On this basis, the arrest could be argued as unlawful.

(3) Entry, search, and seizure

Following Donald's arrest, PC Smith and WPC Jones' arrival at and entry to Donald's house would initially be argued as founded on the power set out in section 18 of PACE. This permits entry on to an arrested person's property, provided the police officers have 'reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates' either to that particular offence, or to some other similar or connected offence.⁸ Similar to the case of *R (on the application of TL) v Surrey Police*, a court could find that the lack of urgency in this instance might mean that a section 8 search, with a warrant, would be preferable.⁹ Indeed, in *Badham*, the court made clear that section 18 is an immediate search power, not one to be exercised later.

Upon their arrival, however, PC Smith and WPC Jones hear muffled gunshots and screams, hence kicking the door in and barging in quickly. On this basis, their actual entry could be justified under section 17 of PACE, which permits entry 'to save life or limb of an individual in the property', this being reasonably justified by what the officers heard whilst outside the property. Upon realising, however, that the gunshots and screams were from an action film on the television, PC Smith and WPC Jones did the right thing in moving to leave the property, their entry under section 17 no longer be justified.

Finally, with regards to the DVDs and CDs that PC Smith and WPC Jones remove from the property, if entry were to be justified under section 18 then the items could be seized pursuant to

⁸ Section 18(1) of PACE.

⁹ [2017] EWHC 129 (Admin) [73].

that provision. Since the officers are seemingly in the property under section 17, however, then seizure of the DVDs and CDs would need to be justified on the basis of section 19.