

23 October 2020 at 9.30am for trial

Crown Prosecution Service

v

Piers Corbyn

DEFENCE STATEMENT

(s.6 CPIA 1996)

The Defendant has pleaded NOT GUILTY to two like offences, to be heard together:

*(1) Participated in a gathering in public of more than two people in England during coronavirus emergency period, on **16 May 2020** at Speakers' Corner, Hyde Park, London, W1, without reasonable excuse, during the emergency period, other than as permitted by the Regulations;*

*(2) Participated in a gathering in public of more than two people in England during coronavirus emergency period, on **30 May 2020** at Speakers' Corner, Hyde Park, London, W1, without reasonable excuse, other than as permitted by the Regulations;*

Both contrary to regulations 7 and 9(1)(a) and (4) of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended) ("the Regulations"). These Regulations came into force on 26 March 2020.

General Nature of the Defence - exercise of the 'right to protest provides a "reasonable excuse"

1. The Defendant submits that he has a defence of 'reasonable excuse' in accordance with the Regulations. It should be noted that the Regulations were amended on 13 May 2020 (SI no.500/2020) and were, more significantly, further amended on 31 May 2020 (SI No.558/2020) to allow the public to gather in groups of not more than 6.

2. The Defendant attended Hyde Park Corner, specifically Speakers' Corner, on both dates to exercise his right of freedom of expression as protected by Article 10 of the European Convention on Human Rights and the Human Rights Act 1998.
3. On both occasions the Defendant travelled alone from his home address to Speaker's Corner taking with him a loudhailer, leaflets, posters and stickers; he did so in order to protest about the policies of the government as applied during the 'emergency period.' This was an explicitly political protest.
4. In so far as the Crown allege that Mr Corbyn was part of a "gathering" of more than 2 people (rather than a lone protestor who was speaking with a loudhailer) the Defendant will assert he was entitled to exercise his additional right to freedom of assembly and association as protected by Article 11 of the European Convention on Human Rights and the Human Rights Act 1998.
5. The 'right to protest', specifically the peaceful exercise of Article 10 and 11 rights, amounts to a 'reasonable excuse'.
6. The Regulations, where they identify circumstances that might amount to a reasonable excuse, do not list 'closed categories', and the Courts should interpret what amounts to a 'reasonable excuse' broadly, all the more so where Human Rights are engaged.
7. Section 6(1) of the Human Rights Act 1998 required that the Metropolitan Police Service, a public authority, should have respected and upheld these fundamental rights: *"it is unlawful for a public authority to act in a way which is incompatible with a Convention right."*
8. The Coronavirus Act 2020 and the Health Protection Regulations 2020 must be read and given effect in a way which is compatible with those Convention rights and the Human Rights Act 1998.

Restrictions on exercise of Human Rights

9. It is not accepted that the Regulations or the 'emergency period' provide justification to circumscribe or suppress the exercise of Article 10 and 11 rights, as exercised peacefully by Mr Corbyn in his particular circumstances on both occasions. In so far as the Crown seek to argue that the defendant was not entitled to exercise his Article 10 and 11 rights, the Crown are asked to respond with written submission in advance of the trial.

Articles 10 & 11 of the European Convention on Human Rights

10. Article 10 provides:

Freedom of expression

Article 10

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the

prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

11. Article 11 provides:

Freedom of assembly and association

Article 11

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State

12. In *Steel v United Kingdom* 28 EHRR 608 at para 101 freedom of expression was said to constitute: “an essential foundation of democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment.” See also *Handyside v UK* (1976) 1 EHRR 737 at para 49.

13. Similarly, in *Ziliberg v Moldova* (Application No 61821/00) (unreported) 4 May 2004, para 2, the Strasbourg Court observed at the outset that: “the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society.”

14. Neither right is absolute, they are qualified rights and may be restricted if the restriction is prescribed by law, necessary in a democratic society and pursues a legitimate aim i.e. they are directed to any one of a number of specified ends (in 10(2) and 11(2)).

15. The restrictions must also be proportionate to the aim pursued (*Sunday Times v United Kingdom* (No 2) (1991) 14 EHRR 229 at para 51; *Hashman and Harrup v United Kingdom* (1999) 30 EHRR 229 at para 32).

16. The approach to be taken in order to determine whether or not interference with the freedoms of expression and assembly enshrined in Article 10 and 11 are justified in a particular case is helpfully summarised by Lord Bingham in *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2007] 2 AC 105 at para 37: Any prior restraint calls for the most careful scrutiny. The Courts will wish to be satisfied not only that a state exercised its discretion reasonably, fairly, consistently, carefully and in good faith, but also that it applied standards in conformity with Convention standards and based its decisions on an acceptable assessment of the relevant facts.

17. At para 85 of *Laporte* Lord Roger further elucidates the principles relevant to the restriction of Article 10 and 11 rights as they applied to action taken by the police to prevent a breach of the peace : “To be permissible, any restriction on these essential rights ... must be necessary in a democratic society. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in articles 10(2) and 11(2) and freedom to express opinions and to assemble.....Here the police were pursuing the legitimate aim of preventing disorder. So the court has to determine whether the police action was proportionate to that legitimate aim, having regard to the special importance of freedom of peaceful assembly and freedom of expression.... In the

familiar trinity in de Freitas, assuming that the breach of the peace was imminent, the critical question is whether the means which the police used to impair the claimant's article 10 rights were no more than were necessary to accomplish their objective of preventing the breach of the peace which they anticipated."

Proportionality

18. In so far as the Court accepts there may be some limitations in law on the exercise of Convention rights during the 'emergency period' the Court should consider the issue of 'proportionality.'
19. Applying these principles to the defendant's case, it is submitted that for the prosecution to be Convention compliant it must be necessary for and proportionate to the purpose of the Regulations having regard to the special importance of Articles 10 and 11, the critical question being whether the defendant's arrest and prosecution were no more than were necessary to accomplish its objectives. In this context Mr Corbyn was not afforded a reasonable opportunity to protest safely or by means of an alternative method and at a safe distance from others nor provided with a sufficient warning prior to his arrest.
20. It is understood that the tactical plan for *Operational Cahuila* on 16 May 2020 envisaged moving to immediate arrest after the taking of name and address (for the issuing of a Fixed Penalty Notice or FPN as per Regulation 10) and having been given a warning to leave the area (as per Regulation 8 (9) (a) and (b)). There is provision in the Regulations for the issue of multiple FPNs but the tactical plan called for quick escalation to arrest. The power of arrest contained in Regulation 9 (7) allows the application of s24 (5) PACE 1984 to include as additional reasons (a) to maintain public health, and (b) to maintain public order; however such an arrest must still be necessary and proportionate. Mr Corbyn offered to supply his details to the officer on 16 May 2020, and did in fact supply his details (being issued with an FPN) on 30 May 2020 but was nevertheless arrested on both occasions.

Discrimination and Article 14 European Convention on Human Rights

21. In consideration of the issues raised above the Court should consider the fact that the Metropolitan Police did not apply the Regulations consistently to political protest in London on the same day as the second offence (30 May 2020) and in subsequent days as regards the protests by 'Black Lives Matter' ('BLM') despite them being on a much larger scale. The Metropolitan Police allowed the BLM protests to go ahead regardless of the Regulations, and did not make a single arrest under Regulation 7. In contrast, numerous protestors (16 and 19 respectively) protesting in Hyde Park about the Regulations were arrested and held in custody. This is discrimination and the Court should take into account Article 14 of the European Convention on Human Rights and the Human Rights Act which prohibits such discrimination. In such circumstances the arrest of Mr Corbyn was arbitrary and disproportionate.
22. It is submitted that the Metropolitan Police operations on both days, 16 and 30 May 2020, were unlawful in so far as they targeted Mr Corbyn and other 'anti-lockdown' protestors, rather than facilitating peaceful political protest, as they did with the BLM protests on 30 May 2020 and subsequently.
23. It is submitted that consideration can be given to the following, when considering the Article 14 point; (i) that other police force in England and Wales such as Nottinghamshire did in fact facilitate

the “anti-lockdown” protests on 16 May and subsequently, so long as they went ahead “in a safe manner”; (ii) that the National Police Chiefs’ Council (NPCC) confirmed in their guidance that there was a “right to protest” subject to public order and public health considerations; (iii) that the Metropolitan Police subsequently changed their policy on political protest in response to the BLM demonstrations; (iv) that the Prime Minister, Boris Johnson, on 7 June 2020 at 21:13 sent a tweet confirming that “People have a right to protest peacefully & while observing social distancing...”

Abuse of Process

24. It is submitted that the prosecution of Mr Corbyn against this background should be stayed as an abuse of process of the Court. The actions of the police in politicising the enforcement of the Regulations by electing to target anti-lockdown protestors over other types of protestor offenses against elementary principles of fairness and propriety, undermines public confidence in the criminal process and brings the criminal justice system into disrepute.

DRAFTED ON BEHALF OF THE DEFENDANT PIERS CORBYN

BEN COOPER QC (DOUGHTY STREET CHAMBERS)

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