

Attorney General seeks clarification on the law following protest case

News story

The Attorney General has decided to refer questions of law to the Court of Appeal concerning the proper scope of defences to criminal charges arising from protests.



The Attorney General, the Rt. Hon. Suella Braverman QC MP, has decided to refer questions of law to the Court of Appeal concerning the proper scope of defences to criminal charges arising from protests, and the directions which should be given to juries in such cases.

The referral relates to the Colston statue protest. The Attorney has concluded that this case has led to uncertainty regarding the interaction between the offence of criminal damage and the rights relevant to protest peacefully. The Attorney's action will not overturn the acquittals in this case.

The Court of Appeal will be asked to clarify the law around whether someone can use a defence related to their human rights when they are accused of criminal damage. The Court will also consider whether juries should be asked to decide if a conviction for criminal damage is a 'proportionate interference' with the human rights of the accused, particularly the right to protest and freedom of expression. In the Colston statue case, the judge directed the jury that, before they could convict, they must be sure that doing so would be a 'proportionate interference' (in other words compatible) with the defendants' exercise of their rights to freedom of thought and to freedom of expression.

Acting independently of Government, in her role as the Guardian of the Public Interest, the Attorney General made the decision in the interests of future cases involving the same point of law.

Since 2000, there have been 19 instances of this power being used by Attorneys General. The last time this power was used was in December 2020

when the Attorney clarified the law in relation to sexual assault.

Commenting on her decision, the Attorney General said:

After careful consideration, I have decided to refer the Colston statue case to the Court of Appeal to clarify the law around protests.

Trial by jury is an important guardian of liberty and critical to that are the legal directions given to the jury. It is in the public interest to clarify the points of law raised in these cases for the future. This is a legal matter which is separate from the politics of the case involved.

- The Attorney has the power to ask the Court of Appeal for clarification on important points of law in some cases where a defendant has been acquitted at trial – which means ‘found not guilty’. The Criminal Justice Act 1972 provides the Attorney General with a power to refer a point of law to the Court of Appeal.
- The Attorney has referred one defendant (who cannot be named for legal reasons) from the Colston prosecution to the Court. This is because their case contains all of the issues which the Attorney wants the Court to clarify the law on. The individual’s acquittal is unaffected.
- The Questions asked of the Court of Appeal are as follows:
 1. Does the offence of criminal damage fall within that category of offences, identified in *James v DPP* [2016] 1 WLR 2118 and *DPP v Cuciurean* [2022] EWHC 736 (Admin), where conviction for the offence is – intrinsically and without the need for a separate consideration of proportionality in individual cases – a justified and proportionate interference with any rights engaged under Articles 9, 10 and 11 of the European Convention on Human Rights (‘the Convention’)? If not, and it is necessary to consider human rights issues in individual cases of criminal damage:
 2. What principles should judges in the Crown Court apply when determining whether the qualified rights found in Articles 9, 10 and 11 of the Convention are engaged by the potential conviction of defendants purporting to be carrying out an act of protest? And
 3. If those rights are engaged, under what circumstances should any question of proportionality be withdrawn from a jury?
- More information about the last time this power was used is available [here](#).

[Factsheet: the Attorney General’s Referral of a Protest Case to the Court of Appeal](#) (PDF, 89.6 KB, 1 page)