

CRIMINAL LAW UPDATE



APRIL 2024

CASE REPORT: *Attorney General's Reference on A Point of Law No. 1 of 2023 Pursuant to section 36 of the Criminal Justice Act 1972* [2024] EWCA Crim 243

Can damaging property to highlight climate change be lawful?

It appears not, after the Court of Appeal (Criminal Division) recently considered how the defence of lawful excuse works in criminal damage cases.

The court considered a point of law originating from a case where the defendant was part of a group who threw pink paint over buildings of various organisations to draw attention to the climate emergency and the inaction of the organisations whose buildings were targeted. The defendant said that she had a lawful excuse because the occupiers would have consented to the damage, had they been aware that it was carried out to alert those organisations to the nature and extent of climate change.

Lawful excuse is covered in **section 5(2)(a) of the Criminal Damage Act 1971**:

A person charged with an offence to which this section applies, shall...be treated for those purposes as having a lawful excuse -

(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances.

The question the court considered in *Attorney General's Reference (No 1 of 2023)* centred around the interpretation of "circumstances" in the phrase the "damage and its circumstances."

In the case, the court relayed a common example where the defence in **section 5(2)(a)** is likely to arise. The case of the stranger discovering a child locked alone in a car on a hot day.

“The child is at risk of harm unless freed. If the stranger damages the car window in order to free the child, the defence of lawful excuse under section 5(2)(a) may be available to them: they believed at the time that the owner of the car would have consented to the damaging of the window because the circumstances of the damage included the need for speedy action, the importance of rescuing the child, and the relative unimportance of the damage to the vehicle. There would be a direct connection between the damage (the broken window) and the circumstances (the freeing of the child).”

The court said the “circumstances” were the circumstances of the damage, and that there must be a sufficient connection between the damage and its circumstances.

In the pink paint case, the defendant’s reason for the damage was an act of protest against climate change. That was a “circumstance” of the damage. However, “further explanation of the defendant’s views on climate change – the extent, reasoning or her wider motivations (including the need to draw attention to the subject matter of the protest) – lacked the necessary proximity to the damage.” The defendant’s views on climate change were too far removed to form part of a defence under **section 5(2)(a)**.

The court concluded:

- i) "Circumstances" in the phrase "the destruction or damage and its circumstances" do not include the merits, urgency or importance of the matter about which the defendant is protesting, nor the perceived need to draw attention to a cause or situation.*
- ii) "Damage and its circumstances" means the damage and the circumstances of the damage which, in protest cases, means the fact that the damage was caused as part of a protest (against a particular cause).*

This means that, in the future, protesters who damage property will not have the defence of lawful excuse open to them if they say, “I honestly believed the owner would have consented to the damage, given the importance of the cause I am highlighting.”

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