

## Hannah Webb

**Call:** 2018

**LinkedIn:**

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**Specialist in:**

- Criminal Law
- Prison Law
- Civil Law
- Direct Access
- Modern Slavery & Trafficking Team
- Direct Access Trained

## Experience

Hannah is a thoughtful and strategic advocate, with a busy mixed practice. She is known amongst her instructing solicitors for her detailed preparation to cases, such that she is “always one step ahead” of others and is “a brilliant barrister to work with”. She is particularly adept identifying novel or complicated legal issues both before and during trials.

Hannah is a highly sought after advocate in proceedings involving human rights. She regularly represents protesters in high profile trials.

Hannah has a busy general crime practice, regularly representing clients in complex drug conspiracies, serious assaults, and with issues relating to modern slavery and human trafficking.

Hannah represents families of the deceased in inquests, and also accepts instructions in public inquiries. She regularly advises on civil actions against the police and public authorities, as well as on employment matters.

Hannah also has a growing appellate practice.

Hannah is public access qualified and able to represent clients directly in all matters including driving matters.

Hannah is co-chair of the Haldane Society of Socialist Lawyers, and previously served on the executive of Legal Sector Workers United. She uses these experiences to bring a unique perspective to her clients' cases, considering not only the immediate charges that they face but also the wider social conditions in which they live.

You can view Hannah's privacy policy [here](#)

## Education

Bar Professional Training Course, BPP Law School

GDL, City Law School

BA History, University College London

## Memberships

Co-Chair of Haldane Society of Socialist Lawyers

Criminal Bar Association

Legal Sector Workers United

Lincoln's Inn

## Languages

Portuguese (basic)

## Cases

### **R v TS, KC & BAJ [2024] Crown Court at Southwark**

Margo Munro Kerr, Dharsha Jegatheeswaran and Meghan Curran successfully overturn convictions of Palestine Action protestors for aggravated trespass on appeal to the Crown Court at Southwark

The three appellants were charged with aggravated trespass. They admitted having



trespassed on to the premises of Lockheed Martin, an arms factory, shortly after which security guards found them carrying rucksacks with items typically used in protests.

At the Magistrates' Court in April this year, the three defendants were represented by Margo Munro Kerr, Dharsha Jegatheeswaran and Hannah Webb. The District Judge found that the defendants were hiding when they were found by security and convicted them on the basis that 'hiding' was an act distinct from trespass, sufficient to aggravate the trespass.

The three appealed their convictions to the Crown Court, where they were represented by Margo Munro Kerr, Dharsha Jegatheeswaran and Meghan Curran (Hannah Webb assisting in written submissions).

Counsel for the appellants argued that 'hiding' in this context could not be considered an act intended to intimidate, disrupt or obstruct, sufficient to aggravate the trespass and in the alternative, that the activities of security guards on a non-working day could not be part of the 'lawful activities' particularised in the charge. Counsel also resisted an attempt by the Crown to significantly alter the basis on which it put its case to include other acts, arguing in alternative that those acts were in any event insufficient to aggravate the trespass.

The Crown Court did not agree that the security guards' activities could not be considered to fall within the lawful activities particularised in the charge, but allowed the appeal on the basis that it was right that the act of 'hiding' on these facts did not amount to a distinct act designed to intimidate, obstruct or disrupt lawful activities, sufficient to aggravate the trespass. The Court did not determine whether the Crown should have been allowed to alter the basis on which its case was put, finding instead that none of the other acts were sufficient to aggravate the trespass.

Margo, Dharsha, Meghan and Hannah, were instructed by Rosa Potter of Kellys Solicitors.

## **The Manchester 10 [2024]**

Hannah Webb of One Pump Court is led by Benjamin Newton of Doughty Street, and was instructed for the appeal by Zachary Whyte and Ruby Breward of Sperrin Law.

The main ground of appeal for which leave was granted is that the approach taken by the trial judge to the law on conspiracy was incorrect.

For more information see [KidsofColourHQ](#).



## **R v LL**

With the assistance of expert evidence Hannah was able to demonstrate that the client in question, with his particular characteristics, had less likely to be suspicious of requests made of him than others might. The jury convicted a co-defendant also charged with Money Laundering, but acquitted Hannah's client,

Hannah was instructed by Tosin Akinboboye and Michael Ackah of Hodge Jones and Allen Solicitors

## **R v AM**

Hannah represented a defendant facing trial for Riot at Bristol Crown Court, who was recently identified as having been involved in the Kill the Bill protests in Bristol on 21st March 2021.

The Defendant was charged with Riot, but following representations by Hannah, the Crown agreed to accept a plea to Violent Disorder, and not pursue the Riot charge.

Following mitigation by Hannah, the Defendant, who was already a serving prisoner for an unrelated matter, was sentenced to six months' imprisonment.

Other defendants convicted following the Kill the Bill protests in Bristol on 21st March have faced sentences of around 4-6 years' imprisonment for Riot, and around 2-4 years' imprisonment for Violent Disorder.

Hannah was instructed by Hussain Hassan of Commons Law.

## **Just Stop Oil Acquittals**

At trial on 26th – 28th June, Hannah Webb, together with Hussain Hassan of Commons Law secured the acquittal of four Just Stop Oil campaigners charged with Aggravated Trespass.

The four defendants blocked the entrance to the BP Petrol Station at Clacket Lane Services. After a day of legal argument and submissions the District Judge found that he was not sure that the four defendants at the entrance were in fact trespassing, and acquitted them.

Three further defendants received very lenient sentences, with two being sentenced to an absolute discharge, and one receiving a small financial penalty.

Hannah was instructed by, and defended alongside Hussain Hassan of Commons Law.



<https://www.theguardian.com/environment/2022/aug/24/just-stop-oil-protesters-block-service-stations-on-m25-in-second-day-of-action>

## **Brook House Three**

Hannah Webb successfully represented one of the Defendants in the ‘Brook House three’ trial.

The Defendants blocked road in front of Brook House immigration removal centre near Gatwick airport. They were initially charged with aggravated trespass, with the Crown later adding the charge of Public Nuisance contrary to Common Law, an offence punishable by up to life imprisonment.

The Defendants told the court that they had hoped to prevent or delay the forcible removal of detainees to Jamaica, with many detainees unlikely to have proper access to legal advice, and with detainees facing risk of serious harm throughout the deportation process.

After a trial lasting 11 days, the jury acquitted all three Defendants in only two hours.

Hannah was instructed alongside Patrick Wise-Walsh of Thomas More Chambers, and Audrey Cherryl Mogan of Garden Chambers. The solicitors were Hussain Hassan of Commons Law and Zachary Whyte and paralegal Ruby Breward of Sperrin Law.

Hannah was instructed by Zachary Whyte and Ruby Breward of Sperrin Law.

## **R v MF**

Hannah represented a man accused of injuring a police officer, such that the officer required stitches and had to take three weeks off work. Hannah’s client, the Defendant, denied causing the injury intentionally or recklessly, and contended that it was as a result of misdirected excessive force by police.

Hannah cross examined five police officers involved in restraining the defendant, outlining their use of force against him. With careful viewing of the BWV she established that at the point the injury to the police officer occurred the Defendant was being lifted in the air by one officer such that both feet were off the ground, with another pulling his left arm to the left, and another pulling his right arm to the right, and another pushing into his shoulder.

After a five day trial, the jury acquitted Hannah’s client in less than an hour.



Hannah was instructed by Mark Toman at Powell Spencer and Partners Solicitors

## **R v RN**

Hannah represented a man charged with assault of an emergency worker.

In police body worn video filmed in the aftermath of the incident the defendant had accepted having pushed the police. At trial Hannah cross examined multiple police officers about their failure to activate their body worn video cameras at an early stage. The Defendant gave evidence about the police having used excessive force on them, and that all force he had used was in self-defence.

The jury found that the case against the Defendant was not proven and acquitted him.

Hannah was instructed by Christine Thompson of Waterfords Solicitors

## **R v EE**

Hannah successfully persuaded the Crown Prosecution Service to discontinue a case against an 18 year old, ahead of his trial for being concerned in the supply of Class A drugs.

Hannah wrote detailed written representations about evidence served concerning exploitation of the Defendant, along with psychological evidence provided, and how it was not in the public interest for the matter to continue the prosecution. The CPS dropped the case after reviewing the representations.

## **R v HC**

Hannah represented a man charged with Assault occasioning in Actual Bodily Harm, Possession of a bladed article, and Witness Intimidation.

He was alleged to have hit an elderly man with a glass bottle, taken out a knife, and some weeks later followed and threatened him to drop the case.

Through a careful analysis of the unused evidence Hannah established delays by the complainant in reporting matters, and investigative failings. Hannah cross examined the complainant about this, and about his own use of force in the incident. The jury acquitted the defendant.



Hannah was instructed by Matt Foot of Birnberg Peirce solicitors.

### **R v JG**

Hannah represented a defendant at trial for possession of Class A drugs with intent to supply, after being found with 72 wraps of heroin and crack cocaine.

Through careful analysis of the Crown's drug expert report, and subsequent analysis of phone downloads, she secured an acquittal at trial, despite the clear inference that the jury could have drawn about the significant quantity of drugs found on him, along with his previous convictions for Class A drug trafficking offences.

### **R v ZB (and others)**

Hannah represented four of ten animal rights activists charged with aggravated trespass of an abattoir.

Hannah represented four of ten animal rights activists charged with aggravated trespass of an abattoir. They disputed the lawfulness of the activity of the farm, due to breaches of animal welfare and hygiene legislation, and advanced a defence of prevention of crime.

Following a 5 day trial the judge acquitted all defendants, finding that there was evidence upon which they could form a belief of criminal offences were being committed on the farm, that they genuinely and honestly believed that offences were being committed, and that they acted with reasonable force to prevent breaches of regulations.

Hannah was instructed by Lydia Dagostino of Kellys Solicitors.

### **R v RT**

Hannah secured a suspended sentence for a client who pleaded guilty to drug supply having been arrested for the offence while on licence from prison shortly after half-time release for drug supply.

Following submissions about the client's personal circumstances, the support he provided for his family, and low risk of causing harm to the public, the judge was persuaded to suspend



the sentence.

Hannah was instructed by Imran Khan & Partners Solicitors

### **R v BK**

Hannah secured a suspended sentence for a client who had pleaded guilty at PTPH to two counts of racially aggravated public order offences of causing intentional harassment, alarm or distress.

Despite the judge deferring sentence on clear terms that the client would only receive a suspended sentence if he complied with his mental health plan and did not take drugs, and the client not complying with the terms, Hannah successfully persuaded the judge that he should still receive a suspended sentence.

Hannah was instructed by Femi Halil of BNG Solicitors.

### **R v DD – Croydon Crown Court**

Represented a young female client for possession with intent to supply Class A drugs, (along with possession of Class B drugs and driving matters) in proceedings which began in the youth court. Following submission of a drug expert report the Crown indicated shortly before trial that they would accept a plea to simple possession of Class A. Following a detailed sentencing note on youth sentencing principles the client was sentenced to a conditional discharge for all matters.

Hannah was instructed by Zachary Whyte of Montague Solicitors

### **R v NE – Guildford Crown Court**

Hannah represented a client for sentence for s.20 Grievous Bodily Harm, following the client pleading guilty to an assault caught on CCTV outside a nightclub. Following Hannah's mitigation he was sentenced to a suspended sentence, £2000 compensation, rehabilitation activity requirements and alcohol abstinence requirement, and no unpaid work or curfew. The client was very happy with the sentence as without immediate custody or unpaid work or curfew it allowed him to go forwards without damaging his career.

Hannah was instructed by Ben Goodman of MPR Solicitors.



## **R v RG – Norwich Crown Court**

Hannah represented one client charged jointly with her husband with money laundering, alongside another couple also charged with money laundering, with each couple said to have laundered around £200,000 each.

Hannah worked closely with counsel for the other defendants and prosecuting counsel to negotiate a plea on a limited basis for each husband where they accepted laundering half the amount of money suggested by the Crown, and no evidence would be offered against each of the wives. Following an indication from the court that on such a basis the husbands would each receive a suspended sentence, the husbands pleaded guilty to money laundering charges, and thereafter the Crown offered no evidence against Hannah's client.

Hannah was instructed by Janice Young of Youngs Solicitors.

## **R v PM – Snaresbrook Crown Court**

Hannah represented a man charged with possession of an offensive weapon, where there was a video of him throwing a metal pole into the complainant's car.

Following service of the defence statement in which numerous disclosure requests were made regarding the complainant in the matter, the Crown offered no evidence, accepting that there was no longer a realistic prospect of conviction.

Hannah was instructed by Kim Chiswick of Edward Fail, Bradshaw & Waterson Solicitors.

## **R v LC – City of London Magistrates Court**

Hannah represented an Extinction Rebellion protestor for trial who was charged with failing to comply with a condition imposed by a senior police officer under s.14 of the Public Order Act 1986.

Hannah cross examined the arresting officer on contamination of her evidence. The officer accepted that she had read another officer's statement, who was also a witness in the case.

Hannah applied to exclude the evidence of the arresting officer, and the bench agreed to exclude her evidence finding it to be "a significant and substantial breach" and found that the "substantial breach would affect the fairness of this trial".



The Crown then offered no evidence against the client, and as such she was found not guilty, and also awarded her significant travel costs for each attendance at court.

Hannah was instructed by Jane Cleasby of Kellys Solicitors.

### **R v AP – Snaresbrook Crown Court**

Client was charged with s.18 Grievous Bodily Harm with intent. Hannah negotiated an agreeable basis of plea for the client and the Crown to a lesser charge of s.20 GBH (causing grievous bodily harm without intent to cause such harm), after which the Crown offered no evidence on the charge of GBH with intent. The client was sentenced to a community order, rehabilitation activity requirement days, and a three month curfew to sleep at his own address or his girlfriend's address each night.

Hannah was instructed by Zachary White of Montague Solicitors.

### **R v AG – Basildon Crown Court**

Hannah Webb represented a client who was stopped with around 12,000 ecstasy tablets in his car, along with some cocaine, 2kg of cannabis, around 9000 class C drugs and around 9000 'psychoactive substance' tablets. He was found in possession of five phones, of which one was an 'encrochat' phone. He was charged with 2 x Possession with Intent to Supply Class A drugs, along with PWITS Class B, PWITS Class C and Supply of Psychoactive Substances. He pleaded to all matters except for supply of cocaine, which the Crown accepted.

Despite the fact that the starting point for half the amount of ecstasy pills would have been 10 years' custody, and the client was a 'third striker' having two previous convictions for drug trafficking offences (and as such a mandatory minimum of seven years custody applied), following Hannah's careful submissions he was sentenced to only six years custody for all matters.

Hannah was instructed by Haroon Shah of Imran Khan & Partners Solicitors.

### **R v JT – Southwark Crown Court**

Hannah successfully represented a client at trial for possession of a bladed article. The police had searched the client at a protest and found a Stanley knife on him. The defence was one of reasonable excuse – that he had a good reason to have the knife on him, and thereafter

had forgotten it was on his person. The jury unanimously acquitted within hours.

Hannah was instructed by Zachary Whyte of Montague Solicitors.

### **R v MS – Chelmsford Court**

Hannah represented a young mother charged with Possession with Intent to Supply Class A drugs, and money laundering, after a significant amount of cocaine and cash were found at her address. Following discussions with the Crown, and guilty pleas from her two co-defendants, the Crown offered no evidence against her.

Hannah was instructed by Rafia Naveed of Waterfords Solicitors.

### **R v YJ – St Albans Magistrates' Court**

Successfully represented a client of good character at trial for £3,000 theft by employee. Following very careful cross examination made successful half time submission on two counts that alleged fraudulent activity which had been mischarged as theft, and if theft had been shown, then there was no evidence of appropriation.

Hannah was instructed by Barbara Scheck of Shepherd Harris & Co Solicitors.

### **R v PG – Stratford Magistrates Court**

Successfully represented a client for failing to comply with interim notification requirements under Sexual Offences Act 2003. Successful half time submission made on the basis that it was not clear that it could be shown he had breached the requirements.

Hannah was instructed by Torell Hector of Youngs Solicitors.

### **R v NS – Kingston Crown Court**

Hannah represented a client at first appearance and PTPH for Possession with Intent to Supply Class A – Cocaine. At first appearance Hannah indicated on behalf of the client that he did not accept supply, but accepted possession. Numerous disclosure requests were made at first appearance.

The matter was sent to the Crown Court, and at the first hearing at Kingston Crown Court the Crown accepted a plea to possession (without any intention to supply) of cocaine.

If convicted of PWITS cocaine the client would have received a sentence of around 4 years.



Following plea to simple possession he received a fine of £250 along with costs and victim surcharge of £82.

Hannah was instructed by Sean O'Brien of Powell Spencer and Partners Solicitors

### **R v DW – Wood Green Crown Court**

Client pleaded guilty at PTPH to possession of counterfeit currency. Due to Hannah's skilled mitigation, the client was sentenced to a conditional discharge, when a sentence of 12+ months immediate custody would be the expected sentence according to caselaw.

Hannah was instructed by Rafia Naveed and Aaron Soni of Waterfords Solicitors

### **R v A – Bromley Youth Court**

Young client found not guilty of possession of a bladed article, despite a police officer giving evidence for the Crown that he saw him throw it. Based on Hannah's careful submissions the bench found the case was not proven.

Hannah was instructed by Robbie Eyles of Just for Kids Law

### **R v JF – Kingston Crown Court**

Crown offered no evidence against a client charged with Dangerous Driving as a result of Hannah serving a skeleton argument seeking to have the proceedings stayed as an abuse of process.

Hannah was instructed by Louise Scott of JD Spicer

### **R v T – Willesden Youth Court**

Represented a seventeen year old child for sentence who had pleaded guilty to one charge of robbery. Persuaded the court to revoke his existing Youth Rehabilitation Order and resentence him to a new Youth Rehabilitation Order.

Hannah was instructed by Richard Demczak of Lewis Nedas Solicitors.

### **R v DS – Peterborough Magistrates Court**

Made representations to the CPS based upon recent caselaw which led to the first charge to be withdrawn. Secured an acquittal on the second charge.

Hannah was instructed by Lucy Wise of Sarfo Solicitors.

### **R v SO – Woolwich Crown Court**

Represented a client from first appearance charged with two assaults of emergency workers (police officers). CPS offered no evidence against the client following review after service of Hannah's defence statement.

Hannah was instructed by Sola Ogundemuren of K&S @ Law Solicitors.

### **R v NC – Margate Magistrates Court**

Secured a suspended sentence in a case of driving whilst disqualified for a client with three previous convictions for driving whilst disqualified, who as a result was still on a suspended sentence. The court did not activate the existing suspended sentence, and imposed an additional suspended sentence.

Hannah was instructed by Wayne Horner of Setfords Solicitors.

## **Publications**

### **What does DPP v Cuciurean mean for protestors?**

In the judgment of *DPP v Cuciurean* [2022] EWHC 736 Admin, handed down on 30 March 2022, the High Court sought to limit to its own facts the judgment in *DPP v Ziegler & ors* [2021] UKSC 23. The judgment in *Ziegler* allowed people facing criminal protest charges to argue that the court should determine whether a criminal conviction would be a proportionate interference with their rights to freedom of expression (Article 10 of the European Convention on Human Rights ("ECHR")) and freedom of association (Article 11 ECHR). The court in *Cuciurean* found that such an exercise would only have to be conducted for offences, like obstructing a highway but not aggravated trespass, where it is a defence to have a "lawful excuse". It also suggested that Articles 10 and 11 may only be engaged where the action took place on public land.

The case rests substantially on consideration of Strasbourg caselaw which has – in the view of the authors – been misinterpreted by the High Court. This article will consider avenues to overturn or distinguish the judgment, which may be useful for defence practitioners and protestors facing criminal charges.



## The facts

Elliot Cuciurean dug a tunnel at a site designated for the HS2 project before it was bought by HS2. He then occupied it for over two weeks and slept in it for two nights before leaving voluntarily. It cost HS2 around £195,000 to safely remove Elliot Cuciurean and another two protestors, and works were delayed until he left. He was charged with aggravated trespass and tried in the Magistrates' Court. The District Judge undertook a proportionality assessment of the kind required by *Ziegler*, considering whether conviction was a proportionate interference with Mr Cuciurean's Article 10 and 11 rights. She acquitted Mr Cuciurean on that basis. The prosecution appealed by way of case stated (appealing specific legal questions from the trial) to the High Court.

## The judgment

The three headline points from the judgment in *Cuciurean* are:

- Statutory offences (i.e. offences created by Acts of Parliament) are to be considered compatible with ECHR rights unless the court is persuaded otherwise (¶70); an analysis of whether a conviction for the offence is proportionate with ECHR rights, as in *Ziegler*, is therefore only necessary for offences which already have a "lawful excuse" defence available;
- Even if the court had made a proportionality assessment, by weighing up the proportionality of a criminal conviction against Mr Cuciurean's Article 10 and 11 rights, as HS2 is a public project which has been authorised by Parliament, Mr Cuciurean's actions caused significant cost and delay, it would have been a proportionate interference with Articles 10 and 11 to convict him of the criminal offence with which he was charged – aggravated trespass contrary to s.68 of the Criminal Justice and Public Order Act 1994.
- Concerningly, the High Court (while not making a decision about it) stated that in their view is arguable that Articles 10 and 11 ECHR are not engaged where a protest takes place on private land or publicly owned land to which there is no right of access (¶¶ 45 & 50).

### (1) Lawful excuse – limiting *Ziegler*?

The judgment relies on the cases of *Bauer v DPP (Liberty Intervening)* [2013] 1 WLR 3617

and *James v DPP* [2016] 1 WLR 2118, both pre-*Ziegler* judgments from the Divisional Court, to limit the proportionality exercise required by *Ziegler* to offences where it is a defence to have a lawful excuse, as was the offence under examination in *Ziegler*. The reason for this is that it is to be assumed that, for offences where there is no defence of lawful excuse, “proof of the ingredients of the offence without more renders a conviction proportionate to any interference with articles 10 and 11” [¶ 61].

Leaving aside the obvious issue that *Ziegler* is a Supreme Court judgment post-dating each of those judgments (with Supreme Court judgments taking precedent over the judgments of lower courts), the court has failed to consider important Strasbourg caselaw on the matter.

In *Perinçek, v Switzerland* [GC], no. 27510/08, ECHR 2015, Do?u Perinçek, of the Turkish Workers’ Party had made statements at public events denying the Armenian Genocide. The Switzerland-Armenia Association brought a complaint against him and he was found guilty of violating Article 261 of the Criminal Code – a law against racial or religious discrimination and genocide denial. Mr Perinçek was ordered to pay 3000 Swiss francs or serve 30 days imprisonment, and also to pay 1000 Swiss francs to the Switzerland-Armenia Association.

Mr Perinçek filed an application to the European Court of Human Rights on the basis that the Swiss courts had wrongfully breached his right to freedom of expression.

This point is made in the case of *Perinçek v Switzerland* [emphasis added]:

272. In two recent cases under Article 10 of the Convention, the Court upheld the proportionality of interferences which consisted in regulatory schemes limiting the technical means through which freedom of expression may be exercised in the public sphere...*By contrast, the form of interference in issue in this case – a criminal conviction that could even result in a term of imprisonment – was much more serious in terms of its consequences for the applicant, and calls for stricter scrutiny.*

Unlike the offence of Aggravated Trespass, contrary to s.68 of the Criminal Justice and Public Order Act 1994, which was made law prior to the writing into law of European Convention Rights with the Human Rights Act 1998, the Swiss law against genocide denial had been introduced.

In particular, in *Perinçek v Switzerland* at § 275, the ECtHR held that

“an interference with the right to freedom of expression that takes the form of a criminal



conviction inevitably requires detailed judicial assessment of the specific conduct sought to be punished. In this type of case, it is normally not sufficient that the interference was imposed because its subject matter fell within a particular category or was caught by a legal rule formulated in general terms; what is rather required is that it was necessary in the specific circumstances.”

## **(2) The proportionality exercise itself**

Despite finding that Articles 10 and 11 may not have been engaged, and that a proportionality exercise was not necessary when convicting an individual of aggravated trespass, the Court nevertheless took 1 side of A4 to find that a conviction would have been a proportionate interference with Articles 10 and 11.

The bulk of that reasoning related to the fact that HS2 is a public project approved by parliament. Space was also given over to reasoning that it was “immaterial” that the costs were miniscule when compared to the total costs of the project, because “that argument could be repeatedly endlessly along the route of a major project such as this.” To this it must be answered: of course it could. And at some point the damage would no longer be proportionate. But until that point, it would.

## **(3) Should proportionality be considered? The distinction between public and private land**

At ¶ 41 of the judgment, *Appleby and Others v the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI is quoted at length to the effect that Articles 10 and 11 do not create any “automatic rights of entry to private property”; although where any bar on access “has the effect of preventing any effective exercise of freedom of expression” there may be a positive obligation on the State to regulate rights of access to protect Articles 10 and 11.

From this, the conclusion is drawn that there is, in general, no right to freedom of expression and association on private land [¶ 45].

*Appleby* concerned environmental activists leafletting in a shopping mall. The shopping mall was private land, dominating the town centre, and the owners of the shopping mall refused to allow them to demonstrate in the mall or to distribute leaflets. However, contrary to the interpretation of the High Court in *Cuciurean*, *Appleby* is a case concerning whether it was lawful for demonstrators to be denied access to a shopping mall, not whether it was lawful for



them to face criminal convictions. The reasoning in *Appleby* contains a proportionality assessment: there is no *automatic* right of entry, but rather, where a bar on access to the property has effect of preventing any freedom of expression, it would not be a proportionate interference with Articles 10 and 11. *Appleby* is not concerned with criminal conviction. A criminal conviction may not be proportionate where denial of right of access would. There are remedies for the owner of the land being trespassed on through civil law (i.e. trespass rather than aggravated trespass), without protestors facing criminal convictions.

The judgment in *Appleby* prevents Article 10 being used to create positive rights, i.e. ‘as a sword’, creating an automatic right of entry to private property. That much is clear. But it does not prevent Article 10 being used in a defensive manner, i.e. ‘as a shield’, where a criminal conviction would not be proportionate.

## **Conclusion**

We hope this article can provide some assistance to protesters facing criminal charges and those representing them. The judgment in *Cuciurean* – in particular the use it has made of *Bauer* and *Ziegler* – is evidence of the fact that “good” judgments should be treated with care. It is hoped that, when *Cuciurean* is considered in the Attorney General’s Reference for the Colston Statue case, the court rejects the framing of the questions by the Attorney General, and finds that an assessment of proportionality (as per *Ziegler*) can and should be considered wherever relevant for all types of offences where Articles 10 and 11 are engaged.

Margo and Hannah are grateful to Blinne Ní Ghrálaigh of Matrix Chambers and counsel in *Ziegler* and *Cuciurean* for her assistance when writing this article.

