

Prison not appropriate for peaceful protestors

18 October 2018



Three peaceful anti-fracking protestors, represented by Garden Court North Chambers' [Richard Brigden](#) and Doughty Street Chambers' Kirsty Brimelow QC, had their [prison sentences overturned yesterday by the Court of Appeal](#).

Simon Blevins, Richard Roberts and Rich Loizou [were jailed at Preston Crown Court last month](#) after being found guilty of causing a public nuisance at Cuadrilla Resources' site in Lancashire between 25th July 2017 and 29th July 2017. It is believed that they were the first peaceful environmental protestors to be imprisoned following conviction since 1932 and their imprisonment risked have chilling effect on future peaceful protests.

The brief history to this matter is that in early 2014 Cuadrilla announced plans to explore for shale gas by use of the process known as Hydraulic Fracturing or "Fracking" at a site just off the Preston New Road, the A583, near Blackpool (the site). It is undisputed that there was and is large scale opposition to fracking in Lancashire and at this site – indeed in June 2015 Lancashire County Council refused Cuadrilla planning permission to frack on the site. However, following an appeal by Cuadrilla the then Secretary of State for Communities, Sajid Javid, overturned that refusal in October 2016 and granted planning permission. Political challenges continued in an attempt to prevent fracking from taking place, but, as argued during the Crown Court trial, they have been conducted by the government in a cynical way and without regard for the views of local people. For example, on 24th July 2018

the government's Energy Minister granted a licence for fracking to start in one well on the last day of Parliament before it went into summer recess, limiting the political processes that could be engaged. In addition, the granting of that licence went against the recommendations of the independent government advisors ([the National Infrastructure Commission](#)) and was widely condemned by environmental charities such as [Friends of the Earth](#).

On July 25th 2017 the three peaceful protestors climbed on top of lorries that were delivering parts to the site. They remained on top of the lorries for between 45 and 87 hours with the intention of stopping Cuadrilla from fracking at the site. Although a contra flow was required, traffic was able to flow around the site notwithstanding the protest. The need for a contraflow was not unusual as over the previous couple of years they had become a regular feature around the site – sometimes they had been put in place to facilitate peaceful protest (usually every Friday) and sometimes to allow Cuadrilla's lorries enter the site. Throughout the duration of this protest people could be heard and seen offering support to the protestors on the lorries.

The three protestors were subsequently arrested, charged with causing a public nuisance and convicted by a jury. When it came to sentencing, they relied upon an age old convention (now also protected by Articles 9, 10 and 11 of the [European Convention on Human Rights](#)) that that peaceful protestors should not be sent to prison. The starting principle for sentencing in protest cases is found in the case of *R v Jones (Margaret)* [2006] UKHL 16, in which Lord Hoffmann said at paragraph 89:

My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in the cases which came before them exemplifies their sensitivity to these conventions.

Notwithstanding this, the trial judge jailed the three protestors for between 15 and 16 months. Furthermore, he refused to suspend the sentences on the basis that the three continued to hold anti-fracking views and, in his view, could therefore not be rehabilitated. It was argued that such an approach was chilling. It was designed to scare others away from peacefully protesting. To equate an honestly held belief (that many academics and governments agree with) with an inability to be rehabilitated represented an interference with the right to freedom of expression. Many people local to the site often protest against fracking. They are ordinary members of the public who are concerned about their local community. They do so on the basis that the police and courts will treat them with respect and proportion. Fortunately, the Court of Appeal stated that the judge was wrong to reject these arguments.

The Court of Appeal led by the Lord Chief Justice ruled that the sentences were manifestly excessive. The sentences were replaced with conditional discharges. Lord Chief Justice Lord Burnett said: "We have concluded that an immediate custodial sentence in the case of these

appellants was manifestly excessive.” He continued by saying that a community order with a significant requirement of unpaid work would have been an appropriate sentence, but given the fact that all three men had served three weeks in prison it was now appropriate to give them conditional discharges instead.

You can find out more about protest law by reading Richard Brigden’s [How to Guide on the right to protest and policing of protests](#).

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