



# Courts and Tribunals Judiciary

## **R v Trowland and Decker**

**21 April 2023**

1. On 4 April 2023 you were both convicted by the jury of causing a public nuisance contrary to s.78(1) and (4) of the Police, Crime, Sentencing and Courts Act 2022. You both now appear for sentence.
2. This matter was first listed for sentence on 13 April 2023, but Mr Trowland was unrepresented. Trowland you were on Day 1 of the trial represented by counsel and a solicitor. You chose to dispense with your counsel on Day 2 after legal argument. You then represented yourself. Sentence was adjourned in part to allow you to re-engage with your legal team and to be represented. This despite indications to the contrary from Mr Trowland at the time of the adjournment. I was informed on 5 April you decided you did want to be represented. No one attended for you last week. The Court adjourned last week having in mind the provisions of **s.226 SA 2020** and **CrimPR 38.1**.

### **Facts**

3. This was a conviction after a 7-day trial. The circumstances of your involvement in this matter was then fully ventilated. Any summary here is simply that a summary.
4. At about 3:45AM on the morning on 17 October these Defendants had a vehicle drop them on the carriageway of the M25 on QE II bridge. They then crossed two low fences at the roadsides and scaled the cable stays on opposite sides of the bridge by sitting astride them and shuffling forward and upwards slowly. Each had a rucksack with them. The Police arrived shortly after you started climbing, and the Defendants were substantially non communicative only indicating that this was a protest, and they were not seeking to harm themselves.
5. It is important to note this is not a bridge where the public in the sense of pedestrians were permitted to be. There is no footpath. In addition, there was signage saying pedestrians not permitted. In addition, the Dartford- Thurrock Crossing Act 1988 at s.23 made clear pedestrians and non-mechanised vehicles

were not permitted to be there and indeed s.23(5) made it an offence to be there. Even if pedestrians were permitted on the bridge deck they were plainly not intended to be on the cable stays which are even as they connect to the bridge deck are some 60m above the River Thames.

6. After about 3 hours you had ascended the bridge to a height about 60m over the bridge deck. You came equipped to stay for a period of some days with hammocks and food and water. Once you had ascended you threw cables across the gap between you and then hoisted a banner between two of the central support towers advertising the protest organisation for whom you were acting. You then descended about 5 metres below that and set up cross wires between the towers. You then installed yourselves in hammocks over the bridge deck and remained there until about 5pm the following day. Mr Trowland you then conducted a series of zoom or phone conferences with various National media organisations.
7. Text messages between Mr Trowland and the event planner or media person he was in text contact with indicated you contemplated staying longer in place but decided they had probably conducted all the media interviews they were going to achieve, and their press person was content they negotiate with the police to come down. Your evidence was that you could not in fact without assistance get down. You needed the police to supply you with ropes to presumably abseil down or you needed a crane to be used.
8. Traffic over the bridge had been stopped using a rolling road block behind the arriving police officers. As you climbed the cables and before you were over the deck the Police had allowed that accumulated traffic to use the two central lanes to continue over the bridge so that the bridge was then traffic free. Other than that the QE II bridge remained closed from about 4AM on 17 October 2023 to 21:15 on 18 October 2022. So, it was closed to traffic for over 40 hours.
9. At about 15:15 on 18 October 2022 a decision was made by the Police to use a very long cherry picker crane to go onto the bridge to move up close to the Defendants. They then surrendered to those in the cherry picker. They were arrested by about 17:15. The hours until 21:15 were then used by the Highways Agency in taking down the cross wires they had put in place and removing the banner and conducting other safety checks before the bridge could be safely re-opened.
10. This bridge was an important road and part of the Strategic Road Network ('SRN') for this country [ <https://nationalhighways.co.uk/our-roads/roads-we->

[manage/](#) ] . To quote from the National Highways website, this network comprises *'motorways and some A roads. Our road network is essential to the growth, wellbeing and balance of the nation's economy'*. Anyone familiar with the Southeast will know the bridge is an important road that serves not just local and commuter traffic moving between Essex and Kent but is important as a main route for freight traffic moving to the Channel crossing.

11. National Highways put in place a system so that two of the 4 tunnels that cross the river at Dartford were diverted for use for Southbound traffic. This was the capacity of the Dartford Crossing before the bridge was built some 30 years or more ago and was then viewed as inadequate and was the reason for the construction of the bridge. Some 30 years later it was of course still more inadequate to meet the demands of traffic and there were very considerable delays caused. These both North and Southbound. Some motorists will have been caused but minor delays, but some, as the evidence showed, will have been caused very considerable delays.
12. National Highways own systems showed that on the Strategic Road Network that there was a minimum of 564,942 vehicles delayed and there was caused 60,548 hours of vehicle delay. Doing the mathematic that means an average delay of 6 minutes and six seconds of delay. That is an average many people may have had a very short delay and others much longer. National Highways data was also able to tell the jury that at 08:30 on the 17 October at Junction 4 of the M25 so South of the crossing there was an 8.4-mile queue and a peak delay of 120 minutes and at the same time on the same day a 7-mile queue north of the bridge.
13. The number of vehicles and the delays shown in those figures excluded vehicles delayed on roads not part of the SRN. There was very considerable disruption caused on those roads which is not included in the National Highways figures.
14. The prosecution called evidence at trial from 12 people, a section of the public, who had been delayed by these matters. They were personal accounts of more than one funeral of friends or close relatives missed, missed hospital appointments leading to continued pain, lost wages and for one business the loss of over £6000 in revenue in the two days. The prosecution in addition for the purpose of sentence produced a further 15 accounts from members of the public who were delayed and inconvenienced by your actions. For each of those there would be many thousand more who might give similar accounts. There was real anger caused. You will recall Mr. Trowland that one witness when you

wrote him a note apologizing for him missing the funeral of his friend of 35 years, you asked it be handed to him as he finished his evidence. He declined to receive it.

15. The National Highways data also gave the jury the very roughest of costs caused by the delays or as they described it an economic impact figure. This was £916,696. He said this was based on an average value time for cars of £15.14 per hour, as supplied by the Dept. of Transport, multiplied by the hours of delay.
16. Mr Trowland your own evidence revealed the extent of the planning for this event.
  - a. There was an event planner working with you and you were looking for something novel that grabbed media attention. That was why this bridge was chosen. There was also a person who dropped you on the bridge and then contacted the Police.
  - b. Trowland you had sketched the bridge and worked out how to do what they planned.
  - c. You picked this period in particular as Government agrees more oil and gas licences in the Autumn.
  - d. Trowland you took media communications training so you could better communicate your message.
  - e. Trowland and Decker practised climbing and the skills of Mr Decker who describes himself as being experienced in this area was undoubtedly of value.
  - f. You practised throwing ropes between you to facilitate the banner erection and that of the hammocks. You sourced lightweight strong climbing equipment and the making of the banner to publicise your actions.
  - g. You took with you, food and drink for your intended stay.
  - h. You conducted risk assessments to reduce the risk of items being dropped or indeed of you falling. It is to be noted that despite that 2 or three items did fall from one or other of you over the period. There were also risk assessments about the other risks you may present to road users for example by the distraction you caused.
  - i. Mr Trowland as I mentioned whilst aloft conducted a series of interviews by Zoom or phone with national Media organisations. All of this took planning and organisation and liaising with what was described as your media person whilst you were suspending yourself over the bridge.
  - j. Whilst you were not physically blocking the carriageway you both indicated that you knew the police were likely to close the carriageway beneath you. Mr Trowland accepted that delays were an entirely

foreseeable consequence of his action. He was doing this he said for the greater good. As you put it the evils people were being saved from were in his mind and those of the action planner greater than the evils caused.

- k. Both of you recognised that your actions were likely to cause anger to the public. Let us be clear here, anger, because they were caused considerable disruption and delay to their lives and from being able to exercise the right to use the bridge and all the concomitant disruption caused by the closure. As Mr Trowland said in evidence, the warning message is dependent on disruption. Mr Decker said studies showed that anger would fade but the message would remain.
  - l. You were going to stay there until the Government met your demands to stop new oil and gas licences but as Mr Trowland admitted in evidence, he did not think they would do so in the timescale available. That being so you knew that this would not work but would cause massive disruption.
17. By your actions you caused this very important road to be closed for 40 hours. This of course as you knew obstructed many tens of thousands indeed hundreds of thousands of members of the public some very significantly. Your obstruction continued over a significant period of time. That was your intention. Only then would there be massive disruption. Only then was it in your assessments newsworthy. Being sensible about it you both knew that was going to be the effect of the action you were taking but in spite of that you chose to undertake such action and to continue it when you had to be aware of the effects. Not least Mr Trowland was in regular communications with others including the press who will inevitably have voiced to him the disruption being caused.
18. You plainly believed you knew better than everyone else and it did not matter if people suffered in consequence so long as it allowed you to impart your message. In short to hell with everyone else. In evidence you were embarrassed and apologetic about the individual crisis you caused. The types of consequence each witness describes was entirely foreseeable and you chose to be wilfully blind to those consequences at the time. I find those apologies after the event to that which was readily foreseeable to ring hollow and to be inadequate and intended to assist you now only with the consequences you face.
19. Decker you were not the main communicator, but you were the experienced climber and were as important to the enterprise as Mr. Trowland.

### **Previous Convictions**

20. For neither of you was this a first offence.
21. Trowland you are now 40. You have six previous convictions. All committed in the context of protests.
- (1) On 30.10.19 for failing to comply with conditions imposed on public assembly you were given a 9-month conditional discharge.
  - (2) On 17.05.21 for obstructing the highway you were fined £150.
  - (3) On 11.07.22 for obstructing the highway on 13.04.22 you were fined £50
  - (4) On 17.03.23 for aggravated trespass on 10.04.22 you were given one day's imprisonment.
  - (5) On 15.02.23 you were convicted of obstructing the highway on 6 April 2022 by climbing onto a tanker in Purfleet. You await sentence for that matter.
  - (6) On 24.03.23 you were convicted of obstructing the highway on 15.04.22 in Grays, Essex.
22. It follows that you were on bail of some nature for the last 3 matters at the same time as you engaged in this action in October last year. All of those more recent actions for Just Stop Oil. You were a committed and active member of that organisation. It is plain from your evidence that you do not see the risks as having reduced and court is really concerned that you will continue to engage in such action as you see fit despite the indications in your evidence that you will not. History indicates you are unreliable in that regard. You have been repeatedly released on bail and have continued to offend.
23. Decker you are now 34 and are a German national who has been resident in this country for a few years. You have one previous conviction from 15.08.19 for aggravated trespass on the 17.07.19. You were given a Conditional discharge for 12 months. I am told you were also on police bail at the time of this offence for another protest related offence under investigation .
24. I have considered the need for PSR in this case. Mr Trowland did not want a report when the matter was considered on 4 April. In the case of Mr Decker this is not a case where the court would be considering any particular disposal that would require a report and if the Court was considering a Community order or conditions to a Suspended Sentence Order then it could impose Rehabilitation Activity Requirements or in particular unpaid work without a report. Counsel agreed there was in those circumstances nothing that they could not deal with by way of background that may otherwise appear in a PSR. In the circumstances it was not felt that it was necessary to obtain a PSR.

## **Mitigation**

25. I have for Mr Trowland read 7-character references uploaded either on 5 April or 12 April. They are some of them from people who have worked with you as a freelance engineer and speak well of you and your capabilities. There are also 3 from either charities or anti racism organisations you have worked with and again speak well of you and your positive presence and contributions.
  
26. I have similarly read for Mr Decker 7-character references. These speak well of you and your abilities in particular as music teacher and how caring you are. One who has known you for longer speaks to you looking after your mother for a considerable period when she was ill and after your father had died in an accident. I understand you are supportive to your partners children. You support yourself teaching music to children and producing podcasts. You are an educated man with 2 degrees and have travelled widely. You had to take over the family business due to death of your father. That was a music school which perhaps underscores why people speak well of you in that skill.
  
27. I note that both of you have said that you do not intend to protest in this way in the future. As to whether that is the reality or is an averment to help you for sentence is hard to assess. I see no signs that you are any less committed to the causes you espouse than before. Mr Trowland you used your opportunity when giving evidence to set out at length your beliefs that motivated you to act as you did. There are of course a number of aims in sentencing. Rehabilitation is an important factor, but it is not the only purpose of sentence.
  
28. It is submitted that I should have regard to the fact that these men committed offences under s.1(1) of the Act not the limb in s.1(1)(b)(i) whereby by their act or omission they created a risk of or caused serious harm to the public or a section of them. Rather they by their act obstructed the public or a section of them in the exercise or enjoyment of a right that they may exercise as set out in s.1(1)(b)(ii). This aspect it is submitted is inherently less serious than the (i) limb of the offence and such should be reflected in sentence.
  
29. Serious Harm in the context is widely defined in s.1 (2) and means a variety of things from death, personal injury through to serious inconvenience or serious loss of amenity. I note that the same maximum penalty applies to both limbs of the offence. One may readily see instances where a number of lives are put at risk that is more serious than an offence under the (ii) limb. However, it does not follow that all limb (ii) offences are less serious than those in limb (i). It is a fact specific exercise to determine the appropriate sentence. The Court

considers that it is not a case where the obstruction caused equates with the sort of serious harm that is reflected in s.1(2) (a). We are not dealing with the risk of ‘*death, personal injury or disease*’. A maximum sentence of 10 years allows a range of sentences that is fact specific.

30. I take all of those matters into account and all that has been said on your behalf by counsel. It is said that it is in their favour that this was well planned to reduce risks to the public and they pray in aid that they are not charged under the s.1(1)(b)(i) limb that they caused serious harm to the public. The Prosecution accepts that as does the Court.

**Sentence.**

31. This is a new offence under legislation passed in 2022. It only applied to behaviours after 28 June 2022. The maximum sentence for this offence, on indictment, is 10 years imprisonment. There are no sentencing council guidelines for this offence of public nuisance and, it being a recently introduced offence, there is no CACD guideline case.

32. I’ve had regard to General Guidelines: Overarching Principles and to the Sentencing Council Guidelines for the Imposition of Community and Custodial Sentences and to s.57 of the Sentencing Act 2020 which set out the purposes of sentencing. This includes of course not simply reform and rehabilitation of an offender but also punishment and the reduction of crime by deterrence. I have those latter two matters very much in mind.

33. I also have in mind s.63 of the Sentencing Act 2020 in considering the seriousness of any offence. I have to consider both your culpability and the harm you caused, intended to cause or might foreseeably have caused.

34. It is no part of my task today to express any view on the merits of your protest one way or the other; my task is simply to apply the law.

35. I have had my attention drawn to the CACD decisions in ***Richard Roberts [2018] EWCA Crim 2739*** and ***James Hugh Brown [2022] EWCA Crim 6***, all of which I have read and considered. These are both offences under the old offence of Public Nuisance at common law. Both of them are protest cases. I have also seen the sentencing remarks in a first instance case of ***R-v-Baldwin*** in Northampton Crown Court a couple of weeks ago.

36. In Roberts protestors against fracking blocked a carriageway of the A583 from Preston to Blackpool for several days by climbing onto the top of lorries and the



Court of Appeal found that substantial disruption had been caused to thousands of people. The trial judge imposed sentences of imprisonment of 16 months and 15 months respectively and in the Court of Appeal those sentences were replaced with Community Orders.

37. In *Brown* a protestor with Extinction Rebellion glued himself to the top of a commercial aircraft at London City Airport. He was eventually removed after a period of about an hour. He was sentenced after a trial to 12 months imprisonment. He served 10 weeks of the sentence but was then released at the oral hearing in the Court of appeal. The Court of Appeal's reasoning including that the sentence of 12 months failed to have due regard to the impact on that appellant because of his substantial impairment of vision. The Court of Appeal held that the custody threshold was passed and agreed with the judge that it was not appropriate to suspend that sentence. In consequence of his disability the sentence was reduced to one of 4 months imprisonment.

38. There is a long tradition of protest in this country and in other liberal democracies. Protest is tolerated but there are limitations on its exercise. In no society can there be a blank cheque in terms of what is permitted.

39. In *Brown* it referred back to the earlier case of *R-v-Roberts* where it was accepted '*That the motivation of an offender can go on to increase or diminish culpability*' [para 32] and '*it is well established that committing crimes, at least non-violent crimes, in the course of peaceful protest does not generally impute high levels of culpability*'. It is important to note that the court added.

*"there is in essence a bargain or mutual understanding operating in such cases. A sense of proportion on the part of the offenders in avoiding excessive damage or inconvenience is matched by a relatively benign approach to sentencing. When sentencing an offender, the value of the right to freedom of expression finds its voice in the approach to sentencing."*[§34 Roberts]

40. This in my view is an important issue in this case. If this was a case where you had stopped the traffic on that bridge for a reasonable period of time whether by climbing the structure or not and had in doing so made your point, then the court may have viewed your culpability and the harm caused in a more benign fashion. That is not what happened. The court takes the firm view that your actions were disproportionate to the end to be achieved. You knew you were not going to change Government policy that day your real aim to achieve maximum publicity by causing maximum disruption by means of a spectacular protest event.

41. I consider the issues of culpability and harm separately.

42. I take the view that your culpability was high for the following reasons:

- (1) You picked a high profile target to cause maximum disruption. You picked part of the strategic road network. This was not a mere A road not part of that network as in *Roberts* it was also different from Brown in that that case involved interference with a plane at an airport. In each of those cases there was disruption but in both those cases the level of disruption was of a different order to that which was planned in this case.
- (2) This was an extensively planned and organised event. It involved not just you two but your event planner and your media person and the person who took you to the bridge.
- (3) You knew full well the road would be closed in consequence of your action and that you would in consequence reduce the flow over that important crossing very substantially. I repeat causing that disruption was the whole purpose of your action.
- (4) You chose to stay up there well beyond a time that was proportionate. You did it to milk the publicity. You from the text messages were prepared to stay up longer. It was that you had achieved your media aims was I find the primary reason in deciding to descend. Not the concern about the continued disruption.
- (5) You knew that it would disrupt individuals and you knew that many would be angry in consequence, but you chose to ignore that and their foreseeable general positions as people seeking to go about their daily lives and you completely prioritised your aims. In terms Mr. Decker you accepted that they would be angry, but you were content to accept that.
- (6) You ignored requests to come down there were officers in contact with you both from one of the towers and by phone.
- (7) You required that a large crane be brought onto the bridge because this was the safest way to bring you down. The Police could not supply you with ropes and leave it to you to descend. That put then those in that cherry picker which ascended to 55m or so at risk in what they did in collecting you and in later clearing up the mess you left behind. That even though it is accepted you co-operated in getting into the buckets and were peaceful in your compliance.

43. I take the view the harm you caused was high. This closed a very important part of the strategic road network for 41 hours. With respect to those in *Roberts* that was the A583 a main road between Preston and Blackpool, not part of the SRN and caused considerable inconvenience and delay to thousands but it was not

the M25 at the QEII bridge. In that case thousands were disrupted. Your action by contrast caused inconvenience to hundreds of thousands of people spread over 2 days. It brought considerable inconvenience to many, slight inconvenience to some and misery to some including local residents where the roads were gridlocked. In disrupting this important freight route the damage both financial and otherwise can only have been considerable.

44. It is also of a very different order of disruption than caused in the case of Brown. It is also very different than the circumstances in R-v-Baldwin at Silverstone.
45. Your motives were your concern about climate change, but you chose in consequence to take totally disproportionate protest action and whilst I reduce your culpability somewhat this is very different than the one other sentence passed for this s.78 offence in the case of Baldwin at Northampton Crown Court. In that case the object was to achieve 'maximum attention' not 'maximum disruption' and the Formula 1 race was in fact already stopped at the time and the protestors entry on the track was for a very short period.
46. Following the General Guidelines: Overarching Principles, the following aggravating factors are correctly identified by the prosecution: namely relevant previous convictions as I have already noted and you were both subject at that time to court bail or police bail. I regard that as a serious aggravating factor. In addition, this was as I have indicated carefully planned and over a period of some weeks.
47. I take account of the mitigation on which each of you rely. Your principal piece of mitigation on which you both rely is that, namely that the only reason you took part in these actions was because of your genuine and deeply held belief that there is a climate emergency which requires immediate attention and action. In addition, you both now say that you will not act this way again and will confine yourselves to lawful protests. The Court would like to believe this was so but your own accounts in evidence indicated how committed you were to this cause.
48. There is re each of you in what I have heard good qualities. You are both I accept in other aspects of your life kind and caring men.
49. I want to make it clear in my view the custody threshold is comfortably passed in each of your cases. These were high culpability and high harm cases and disproportionate as protests.

50. I take the view that sentences of imprisonment are justified even in the context of peaceful protests causing public nuisance. This is a conclusion consistent with jurisprudence in both Strasbourg and in this country.
51. I turn then to address the appropriate sentence in each of your cases.
52. **Morgan Trowland.** In 2022 you had been busy in your protests. You now have 4 convictions from your activities on various dates in April 2022. All of the behaviour in South Essex and behaviour for which for 3 of those matters you were on bail at the time of this offence. This is a significant aggravating feature of your case.
53. You took a leading role in this offence. You were by your actions that year demonstrating your close commitment to Just Stop Oil and its aims. It was you that spoke about discussing with the JSO Event planner a way to capture the interest of the press and this is what you decided upon. I cannot ignore that you yourself are a Civil Engineer who has built bridges in the past. The attractions of this site to you for protest appear obvious.
54. You said that a reason this bridge was chosen was its proximity to oil terminals. I take the view that was but a subsidiary benefit as you perceived it to be more integral attractions of the bridge as a spectacular protest site.
55. You took on the role of communicator to the Press and did that over the course of the protest. You attracted interest because you had found your novel protest. You are a clever man and I have absolutely no doubt you knew the chaos this would cause but you still chose to do it. You severely reduced traffic flows on one of the main arteries around London and from the Continent to the UK in consequence of your actions.
56. A real risk here is that if this worked and garnered media attention because of its scale and novelty what will be the next novel protest to re-capture that interest. If novel is to be equated with massive disruption to the public then the attraction of that link needs to be broken. You have to be punished both for the chaos you caused and to deter others from seeking to copy you in that next protest. Deterring you and others from actions that cause such a level of nuisance is an important aspect of this sentence.
57. I use in your case a starting point of 4 years imprisonment. I then reduce it to take account of your personal mitigation and primarily that this was for you a matter of conscience. I reduce it substantially to a period of 3 years

imprisonment. You of course have no credit then to reduce it further in consequence of pleading guilty because you fought the trial. That means the sentence for this offence is 3 years imprisonment.

58. You will serve up to half that period in custody and then be released on licence to serve the remainder of your sentence in the community. There will be conditions to the licence and if you do not comply with those conditions then you may be subject to recall for some or all of the remaining custodial period.

59. The Victim surcharge applies in this case and an order will be drawn up in the appropriate amount and you have 2 months to pay that order.

60. **Marcus Decker.** You also have a record for protesting. It is not as extensive as that of Mr Trowland nor for matters as recent. I am aware that you also were on bail for a protest related offence under investigation at the time of this offence. This again is an aggravating feature in your case.

61. I take the view you played an important part in what took place. No banner or hammocks could have been put in place if you also had not been there. I accept you did not conceive the plan and pick the target as did Mr Trowland, but you joined it when it had formed. You were still involved for a substantial period in the practical planning. You were by your actions demonstrating your close commitment to Just Stop Oil and its aims. You were unapologetic about that in evidence. You may have been there primarily because of your commitment and for the practical skills that you brought. You were the person with expertise in climbing and that was required. I take the view without your skills this is unlikely to have been able to take place.

62. You as with Mr Trowland knew what the effects of your actions would be and indeed what were the effects of your actions. At the heights you were suspended you will have had sight of the queues of traffic you caused in both Essex and Kent.

63. I note that you were not the person communicating to the Press. You had no phone on you. That was not your role. Mr Trowland was there to communicate the message to the media. Mr Trowland is older than you and has a longer record of offending. I draw some distinction between you in terms of the sentences passed.

64. Again, you have to be punished both for the chaos you caused and to deter others from seeking to copy you in the next protest. Deterring you and others

from actions that cause such a level of nuisance is an important aspect of this sentence.

65. I use in your case a starting point of 3 years and 6 months imprisonment. I then reduce it to take account of your personal mitigation and primarily that this was again for you a matter of conscience. I reduce it substantially to a period of 2 years and 7 months imprisonment. Again, you have no credit for pleading guilty to then reduce it further. That means the sentence for this offence is 2 years and 7 months imprisonment.
66. You will serve up to half that period in custody and then be released on licence to serve the remainder of your sentence in the community. There will be conditions to the licence and if you do not comply with those conditions then you may be subject to recall for some or all of the remaining custodial period.
67. The Victim surcharge applies in this case and an order will be drawn up in the appropriate amount and you have 2 months to pay that order.

**HHJ Collery KC**