



Neutral Citation Number: [2021] EWHC 483 (Admin)

Case No: CO/3915/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10/03/2021

**Before :**

**LORD JUSTICE DINGEMANS**  
**and**  
**MRS JUSTICE STEYN**

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**Between :**

**MARYAM HALCROW**  
**ANGEL GRACE**  
**LISA MEAD**  
**- and -**  
**CROWN PROSECUTION SERVICE**

**Appellants**

**Respondent**

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**Audrey Cheryl Mogan** (instructed by **Bindmans Solicitors**) for **Maryam Halcrow**  
**Tihomir Mak** (instructed by **Bindmans Solicitors**) for **Angel Grace**  
**Conall Bailie** (instructed by **Bindmans Solicitors**) for **Lisa Mead**  
**Paul Jarvis** (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing date: 25 February 2021  
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**Approved Judgment**

**Lord Justice Dingemans :**

**Introduction**

1. This appeal raises the issue of whether the appellants had a reasonable excuse, within the meaning of the Stonehenge Regulations 1997, for entering the stone circle at Stonehenge on 4 February 2018 and 6 May 2018. The reasonable excuse was that the restrictions on entry to the stone circle impermissibly infringed the appellants' rights under articles 9, 10 and 11 of the European Convention on Human Rights and Fundamental Freedoms ("ECHR"), to which domestic effect was given by the Human Rights Act 1998.
2. The appeal is by way of case stated from a written judgment and order of the Crown Court at Swindon (His Honour Judge Crabtree and Magistrates) dated 29 November 2019, dismissing an appeal by the appellants from their convictions at Swindon Magistrates' Court on 15 November 2018. The appellants' convictions were for offences contrary to regulation 3(h) of the Stonehenge Regulations 1997 and section 19 of the Ancient Monuments and Archaeological Areas Act 1979. The appellants were sentenced to a conditional discharge.

**Extension of time for filing the case stated**

3. There is a procedural point which needs to be addressed. The appeal in the Crown Court was heard on 8 and 9 August 2019. Judgment was reserved and delivered on 29 November 2019. An application to state a case was made in time and in accordance with the Criminal Procedure Rules 35.2(1) on 19 December 2019, but it was returned by the Crown Court because one question was frivolous.
4. The application was amended and returned to the Crown Court. Thereafter there were delays caused by the COVID-19 pandemic in drafting the case and making representations on it. The appellants' solicitors responded to a request to provide part of the transcript on 24 June 2020.
5. It appears that the final case stated was issued by the Crown Court on 30 June 2020 and it was sent to the High Court on that date. A copy of the letter sent by the Crown Court to the High Court and the enclosed case stated was copied by DX to Bindmans, the appellants' solicitors, on 30 June 2020. However as there was no letter addressed directly to Bindmans there was an oversight by administrative staff employed by Bindmans and the case stated was scanned but was not forwarded to the relevant fee earner or any fee earner. The administrative staff were working in difficult circumstances because of changes to working practices as a result of the COVID-19 pandemic.
6. It appears from the witness statement of the solicitor dealing with the case at Bindmans, that there were communications with the court on 25 August, 2 September, 28 September, 8 October and 15 October 2020. The court had informed a trainee solicitor making the inquiry on 25 August that the case stated had been sent to the High Court and a copy of the case stated was requested on 2 September 2020. The Court replied on 16 October 2020 stating that the case stated had been sent on 30 June 2020. Thereafter the case stated was located and the appellant's notice filed.

7. Once a Case has been stated for the opinion of the High Court the procedure ceases to be governed by the Criminal Procedure Rules and is governed by the Civil Procedure Rules, and in particular CPR 52 Practice Direction 52E. Paragraph 2.2 of Practice Direction 52E provides that “an appellant must file the appellant’s notice at the appeal court within 10 days of the date of the case stated by the court”. This meant that the appellant’s notice should have been filed on 10 July 2020. In fact the appellant’s notice was filed on 26 October 2020, which was some 3 and a half months out of time. The appellants seek an extension of time for filing the statement of case.
8. There is power to extend time for service of the appellant’s notice pursuant to the Civil Procedure Rules 52.15 and 3.1. It was common ground that the relevant guidance set out in *Denton v TH White Limited* [2014] 1 WLR 3926 at paragraph 24 should be applied.
9. It was accepted on behalf of the appellants that there was a serious default in this case, because there was a delay of over 3 and a half months in filing the appellant’s notice after receipt of the case stated from the Crown Court.
10. The reason that the default occurred is because the case stated was not forwarded to any fee earner by the administrative staff who had received the case stated in the DX. It was recognised on behalf of the appellants that this should have happened.
11. In considering all of the circumstances of the case it is relevant to note that all of the parties were aware that the appellants were appealing by way of case stated because the appellants had applied to the Crown Court to state a case in time. The case stated was not forwarded to the relevant fee earner by the member of the administrative staff who dealt with it. There were difficulties caused to the firm’s administration by the COVID-19 pandemic. The fee earner, after receipt by the firm of the case stated which was not known to her, contacted the Crown Court to find out what had happened to the case stated. The errors which led to the serious delay in filing the appellant’s notice were made by the appellants’ firm and not by the appellants themselves. These proceedings are criminal so that it is appropriate to have some regard to the distinction between the legal representatives on the one hand and the appellants on the other hand so far as fault for the delay is concerned. The Crown Court did state a case for this appeal, showing that there are proper issues to be considered on this appeal. Finally it is apparent that the delay has not caused any further difficulties in dealing with the appeal. In these very particular circumstances in my judgment it is appropriate to extend time for filing the notice of appeal.

### **The questions**

12. The two questions for the High Court set out in the case stated are:
  - (1) Was the Court wrong in law when it reached its determination on proportionality (of interference with the appellants’ ECHR rights) when there was no evidence adduced by the Crown relating to proportionality, despite the burden of proof resting on the Crown, and no other evidence adduced upon which the Court could properly reach a finding that the restriction was proportionate?

- (2) Was the Court wrong in its analysis of regulation 3(h) by failing to interpret ‘reasonable excuse’ in a manner compatible with the Human Rights Act 1989 (and instead focussing on the prima facie restriction created by regulation 3(h))?
13. At the hearing all parties accepted that the wording of the first question, which had been suggested to the court by the parties, was not as succinct as it could have been. It was also common ground that the answer to the second question was dependent on the answer to the first question. This was because if there was not an impermissible interference with the appellants’ rights, there would not have been a reasonable excuse within the meaning of the 1997 Regulations. On the other hand if there had been an impermissible interference with the appellants’ rights under articles 9, 10 and 11 of the ECHR, the appellants would have been able to rely on those rights as a reasonable excuse for accessing the stone circle.

### **Relevant factual background**

14. It is established law that a court hearing an appeal by way of case stated is restricted to the facts set out in the stated case. In this case the Court stated a case having produced a written judgment. The findings of fact are set out in the case stated which incorporated findings of fact made in paragraphs 15 to 21 of the judgment. The relevant facts set out in the case stated and the incorporated written judgment of the Crown Court are set out below.
15. Stonehenge is a site of global significance and is designated as a World Heritage site. Its preservation for future generations is essential. Stonehenge was given, by a deed of gift dated 26 October 1918 by Mary and Cecil Chubb to the Commissioners of Works for the benefit of the nation, pursuant to the Ancient Monuments Consolidation and Amendment Act 1913.
16. Entry to Stonehenge is ticketed and timed in general admission hours, but entry to the stone circle is prohibited. There is also available pre-booked access to Stonehenge and the stone circle for up to 30 people for one hour outside general admission hours, but the visitors are not allowed to touch the stones. Entry is free to Stonehenge and the stone circle on the days of the summer and winter solstice and the spring and autumn equinox (although there is a parking charge for those arriving by car). These are known as managed open access (“MOA”) days. About 9,500 people attended the summer solstice in 2018.
17. Material facts were that the stone circle was surrounded by a rope barrier and a no entry sign. On 4 February 2018 a number of protestors gathered to protest against what they perceived to be English Heritage’s mismanagement of Stonehenge and the requirement to pay for entry. The police distributed letters and the police explained to some of the protestors “points” that the protestors might breach if they took part in the protest. Ms Halcrow stated that she was there to worship at her temple. A group of protestors walked through the entry gate to the stone circle. A police officer attempted to hand a copy of the Stonehenge Regulations to the protestors and Ms Mead did not accept them, saying that she had read them. Ms Halcrow, Ms Mead and other members of the group stepped over a rope barrier and into the stone circle. Ms Mead encouraged other visitors to come over the rope into the stone circle. Ms Halcrow began to sing and chant and touch the stones. Ms Halcrow, Ms Mead and the others left after about 10 minutes.

18. On 6 May 2018 a group of six people including Angel Grace, Ms Mead and Ms Halcrow walked in without tickets and walked towards the stone circle. They were singing about being protesters, about access to Stonehenge being free and no profit being derived from Stonehenge. They stepped over the rope barrier and entered the stone circle, remaining inside for about 10 minutes. Ms Grace and Ms Mead were silent lying on the ground. Ms Halcrow was touching the stones. Ms Halcrow and Ms Grace sung at times. The evidence from the security staff was that it was a polite and peaceful protest. The appellants were found by the Crown Court to be well aware of the Stonehenge Regulations 1997 and that each had knowingly entered an area to which they knew access was restricted by a rope barrier and notices prohibiting entry.
19. The appellants had religious beliefs in paganism, druidism and “light working”. Ms Mead said that she derived energy from the stone circle where she could charge her crystals to work in healing. Ms Mead said that the party mood on the MOA made it difficult for her to access energies required for healing. Ms Mead said that she could perform healing and charge her crystals at the Avebury stone circle but it was not as powerful as Stonehenge. Ms Mead complained that English Heritage, which has a charitable and commercial arm and who manage Stonehenge, had not complied with the deed of gift. Ms Mead said that English Heritage made a profit from Stonehenge. In evidence Ms Mead accepted that she could book in advance days of access to the stone circle but she did not consider that she needed to because of her interpretation of the deed of gift to the nation.
20. Ms Grace said that she had been on the druidic path for about 10 years and was the bard from Avebury. She picked up energy from singing. She was drawn to Stonehenge and gained inspiration from the stones, and had become known as the Stonehenge singer. When she was lying in the stone circle it was as a remedy for her severe back pain. Ms Grace considered the cost of entry to the stone circle outside general admission hours to be prohibitive and she did not have a lot of money. She wanted access for eight druidic festivals a year. The MOA days were too crowded for her to practise her beliefs.
21. Ms Halcrow said that she had been a pagan since 1984 and had entered the stones to sing to the ancestors. She said that for her to worship it was essential that she enter the stone circle and that she needed to touch the stones. Ms Halcrow said that she had tried other stone circles but they were like substations and Stonehenge was the power station. Ms Halcrow said that she was a lunatic and wanted access to the stone circle on every full moon. Ms Halcrow could not attend on the MOA days because of the crowds and the lack of access to disabled toilets. The evidence showed that Ms Halcrow had a number of medical conditions, the details of which it is not necessary to set out in the judgment, which led to anxiety and a difficulty in negotiating crowded spaces.

### **The judgment of the Crown Court**

22. The court set out the relevant regulations and matters of law. The court recorded that it could not speculate and was mindful of the importance of that matter “where, for some reason unknown to us, the respondent chose not to call any evidence from English Heritage ...” other than a member of security staff present on 6 May 2018. They made the findings of fact set out above.
23. The Crown Court set out in paragraph 15 of its judgment the relevant findings of fact summarised above. The Court found that each of the appellants held beliefs (of neo-

paganism, as a Bardic Druid, or as a “lunatic” influenced by the moon) which attracted the protection of article 9 of the ECHR.

24. The Court found that the appellants’ conduct engaged articles 9, 10 and 11 of the ECHR. In respect of the five offences, the Court found that the appellants were present both to practise their religion and to protest against the management of the site by English Heritage.
25. The Court found that the restrictions on entry to the stone circle were prescribed by law, being set out in the Ancient Monuments and Archaeological Areas Act 1979 and the Stonehenge Regulations. The Court stated that it was unfortunate that the respondent did not call any witness from English Heritage, but found that preserving the site for future generations was a legitimate aim and that “we are completely satisfied from other evidence that the legitimate aim” of the restrictions was the protection of the rights and freedoms of others. The Court recorded that “there is no dispute that Stonehenge is a site of global significance and hence its designation as a ‘World Heritage Site’. Indeed all of the appellants appeared to accept that its preservation for future generations is essential”. The Court found that a number of factors demonstrated that there was a pressing social need to protect Stonehenge both now and for future generations.
26. The court found as a fact, in paragraph 22 of the judgment, that each of the appellants knowingly entered an area to which they knew that access was restricted. The court held that each appellant did not have a reasonable excuse for doing so. At paragraph 23 of the judgment the court found that the restriction on the appellants’ rights under articles 9, 10 and 11 of the ECHR met a pressing social need, namely the protection of the very essence of the monument for current and future generations by strict control of access to the stone circle.
27. The Court considered whether the restriction on access was proportionate having regard to the complaints made by the appellants about mismanagement of the site and charging regime. The Court took account of the fact that there was free access on four days each year, and paid access for pre-booked groups in the morning and evening. The Court found that the protests would have had some impact on the enjoyment by others of Stonehenge. The Court noted that there were other areas where the appellants could protest peacefully, including immediately to the north of the stone circle on the permissive path well within sight of the stone circle and tourists. In the light of all of the factors the court found that regulation 3(h) was a necessary and proportionate restriction on the appellants’ rights to protest their strongly held views. The court was also satisfied that the restrictions on article 9 ECHR rights were proportionate.

### **Relevant legal provisions**

28. Section 19 of the Ancient Monuments and Archaeological Areas Act 1979 provides that the Secretary of State might by regulations regulate access to monuments and areas. Contravention of the regulations rendered a person liable on summary conviction to a fine not exceeding level 2 (currently £500) on the standard scale. The Stonehenge Regulations 1997 revoked earlier Stonehenge Regulations. The Stonehenge Regulations 1997 provide for the regulation of access to Stonehenge.
29. Regulation 3(h) of the Stonehenge Regulations 1997 provides that “*the following acts are prohibited ... (h) without reasonable excuse entering or being upon any part of the*

*site of the monument to which access is at any time restricted by barrier or prohibited by notice”.*

30. Regulation 4 of the Stonehenge Regulations provides that *“the following acts are prohibited unless the prior consent in writing of English Heritage has been obtained: (a) entering or being within the site of the monument at any time when it is not open to the public ...”.*
31. The Human Rights Act gave domestic effect to the ECHR. Section 3 of the Human Rights Act provides that, so far as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with rights under the ECHR. Section 12 of the Human Rights Act provides that whenever a court is considering granting any relief which might affect the exercise of the right of freedom of expression it should have “particular regard” to the importance of freedom of expression. Section 13 of the Human Rights Act provides if a court’s determination might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of thought, conscience and religion, the court must have particular regard to the importance of that right.
32. The rights and restrictions on the rights contained in articles 9, 10 and 11 of the ECHR are set out below:

“Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for

the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

#### **Relevant legal principles**

33. Religious freedom, freedom of expression and freedom of assembly have been protected by the common law, and are now guaranteed by the ECHR. Religious freedom, freedom of expression and freedom of assembly are essential freedoms in a modern democratic state. As particular emphasis was placed on religious freedom in this case it should be recorded that the importance of the religious freedoms guaranteed by article 9 of the ECHR has been addressed in numerous cases. Religious freedom is a foundation of a democratic society. Religious beliefs are “one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it”, see *Eweida v UK* (2013) 57 EHRR 8 at paragraph 79.
34. The relevant legal questions to be addressed in deciding whether there was an impermissible infringement of the appellants’ rights under articles 9, 10 and 11 of the ECHR were identified in *Bank Mellat v HM Treasury (No.2)* [2013] UKSC 38; [2014] AC 700 at paragraph 20 and *DPP v Ziegler* [2019] EWHC 71 (Admin); [2020] QB 253 at paragraphs 63 and 64. These questions are identified and addressed below.

#### **Issues and competing submissions**

35. In the context of this appeal it was common ground that at the material time: (1) the appellants were exercising rights under articles 9, 10 and 11 of the ECHR; (2) the Stonehenge Regulations and the 1979 Act interfered with those rights by making it an offence to cross the rope barrier and enter the stone circle; (3) the interference was prescribed by law in the Stonehenge Regulations and the 1979 Act; and (4) the interference was in pursuit of a legitimate aim for the purposes of articles 9(2), 10(2) and 11(2) of the ECHR, namely the maintenance of Stonehenge for the rights and enjoyment of present and future generations.



36. This means that the vital question is: (5) “whether the interference was necessary in a democratic society to achieve that aim”. This raises what has been termed “the ultimate balancing test” and the proportionality of the measures employed to protect the stone circle. If the interference is necessary, the interference with the appellants’ rights under articles 9, 10 and 11 of the ECHR will be justified and the Crown Court will have been entitled to find the appellants guilty of the offences contrary to the Stonehenge Regulations and the 1979 Act. If the interference is not necessary it was common ground that there would be a reasonable excuse, within the meaning of regulation 3(h) of the Stonehenge Regulations, for the appellants’ entry into the restricted area of Stonehenge.
37. It was also common ground that in order to answer “whether the interference was necessary in a democratic society to achieve the aim” the following issues (paraphrased from *Bank Mellat* at paragraph 20) need to be addressed. First whether the aim was sufficiently important to justify interference with a fundamental right. It was common ground that the preservation of Stonehenge was a sufficiently important aim. Secondly whether there was a rational connection between the means chosen and the aim in view. It was common ground that restricting access to the stone circle at Stonehenge was rationally connected to the preservation of Stonehenge. Thirdly whether there were less restrictive means available to achieve that aim; and fourthly whether there was a fair balance between the rights of the individual and the general interest of the community, including the rights of others. The appellants and respondent proposed different answers to the third and fourth issues.
38. This means that the critical issues for this Court to decide are: “whether there were less restrictive means available to achieve the aim of preserving Stonehenge”; and “whether there was a fair balance between the rights of the individual and general interest of the community, including the rights of others”. The burden of proof is on the authority seeking to justify the measure.
39. The appellants submitted that in this case the prosecution had not adduced evidence, or sufficient evidence, in the Crown Court, in particular from English Heritage who manage Stonehenge, to permit the Crown Court to answer these questions in a manner adverse to the appellants. The appellants relied in that respect on opening comments made by HHJ Crabtree remarking to the prosecution about the absence of evidence. It was submitted that the Crown Court took a wrong approach to the critical matters and should, given the absence of evidence, have acquitted the appellants. The appellants submitted that it must be disproportionate to permit thousands to enter at the summer solstice, but at the same time restrict the access of the three appellants to the stone circle. The appellants complained that in some passages in the judgment of the Crown Court, the court had concentrated on their actions rather than focus on the evidence, or absence of evidence, of justification.
40. The respondent submitted that there was sufficient evidence in the agreed facts and other evidence before the court to justify the admitted interference with the appellants’ rights. The respondent relied on the evidence showing that access to the stone circle could be obtained on MOA and for payment at other times. The respondent submitted that there was no less restrictive means of preserving access to Stonehenge available, given that the appellants had just turned up and then entered the stone circle. The respondent pointed to the unchallenged findings of fact made by the Crown Court to the effect that the protest could have been positioned near to the stone circle but without

accessing it. The respondent submitted that restricting access to the stone circle struck a fair balance between the rights of the appellants and others.

41. I am very grateful to Ms Mogan, Mr Mak, Mr Bailie and Mr Jarvis and their respective legal teams for their excellent and focussed oral and written submissions.

**The interference with the appellants' rights was necessary in a democratic society**

42. In my judgment the Crown Court was right to consider the activities of the appellants at the material time, because without such a focus on the appellants' activities it would not be possible to make a fair assessment of the appellants' rights which were engaged. That said, I agree with the appellants that the Crown Court was also required to focus on the evidence adduced and relied on by the prosecution to justify the interference with the rights of the appellants. This is so that the court can "undertake a close and penetrating analysis of the factual justification", see *R v Shayler* [2002] UKHL 11; [2003] 1 AC 247 at paragraph 61, to determine whether any interference with fundamental rights was justified and proportionate.
43. I do not accept that the provisional comments made by HHJ Crabtree at the start of the case, about the apparent absence of evidence adduced by the prosecution on the issue of proportionality, should determine this appeal in favour of the appellants, any more than the decision of HHJ Crabtree and the Magistrates at the end of the appeal to them that the restrictions on the appellants' rights were justifiable and proportionate, should determine the appeal in favour of the respondent. This is because this court must determine for itself whether the finding made by the Crown Court that the interference with the appellants' rights under articles 9, 10 and 11 was justifiable and proportionate, was wrong.
44. As set out above, there was evidence adduced by way of agreed facts and other evidence found by the Crown Court on which the prosecution was entitled to rely in the proportionality analysis. On the findings of fact made by the Crown Court the evidence relevant to the issue of justification of the interference with the appellants' rights was that Stonehenge was a world heritage site. Stonehenge had been described as "a prehistoric site of incalculable importance" (by the then European Commission on Human Rights when considering very different issues in *Pendragon v The United Kingdom* 1998 (27 EHRR CD179)). Relevant evidence also included the ways in which rights of access to the stone circle on MOA days and at other times might be obtained, and the existence of access to other areas near Stonehenge such as the permissive path.
45. So far as the right to protest in this case, which engaged both articles 10 and 11 of the ECHR, the Crown Court was correct to identify that there were other areas near to Stonehenge where the appellants could have lawfully gathered and communicated their concerns with and unhappiness about English Heritage's management of Stonehenge which would have been near to Stonehenge and visible to those visiting Stonehenge. There was nothing in the evidence which suggested that walking into the stone circle assisted in making the points that the appellants wanted to make about mismanagement, cost and the effect of the deed of gift.
46. So far as religious freedom, which engaged article 9 of the ECHR, is concerned, the touching of the stones together with the singing, chanting and lying down in the stone circle, showed that presence in the stone circle was a necessary part of the manifestation

of the religious beliefs on the respective occasions. The evidence adduced by way of agreed facts did highlight the four MOA days and the access to the stone circle which was available to the appellants, and anyone else, who had booked and paid for pre and post admission times access to the stone circle. It is also necessary to record that the evidence showed that one of the appellants had limited means, other evidence showed that one of the appellants suffered a medical condition which meant that she was unable to be with crowds of people, and further evidence proved that another of the appellants was distracted by the atmosphere from the crowds on MOA days.

47. The evidence about events on the day showed that the appellants had arrived at Stonehenge, walked towards the stone circle, walked over the rope barriers and then remained in the stone circle to stage their protest and to sing, chant, touch the stones and lie down. In these particular circumstances the only less restrictive means available to avoid any interference with the appellants' rights under articles 9, 10 and 11 of the ECHR would have been to remove the restrictions on entry to the stone circle as soon as the appellants had approached the stone circle. That would have been a very ineffective way of preserving Stonehenge for the current and future generations, because it would have meant in practice that restrictions on access to the stone circle would have had to be suspended as and when any person chose to walk into the stone circle, so long as they were protesting or exercising religious rights, with the inevitable impact on Stonehenge that such unfettered access would cause.
48. In my judgment the fact that free access is made available to the stone circle on the MOA days to a substantial number of people, does not undermine the continuing importance of regulating access to the stone circle. It is apparent from the report in *Pendragon v The United Kingdom* that there had been a history of other proceedings where other persons had asserted rights to access to Stonehenge. MOA days provide access to the stone circle at Stonehenge so that others, to whom the MOA days are important, may exercise their own religious freedoms and freedom of expression. Although MOA days are not, on the evidence before this court, satisfactory for all of these appellants, there are ways within the scheme of the 1997 Regulations, and in particular regulation 4, in which access to the stone circle might be arranged by agreement with English Heritage.
49. In these circumstances in my judgment the removal of restrictions on access to the stone circle because the appellants turned up and wanted access to the stone circle to protest and exercise religious freedoms, would not strike a fair balance between the important rights of the individual appellants and the general interest of the community to see Stonehenge preserved for present and future generations. This is because it would have meant in practice that access to the stone circle would have had to be lifted as and when any person chose to walk into the stone circle, so long as they were protesting or exercising religious rights. Such access would inevitably have an adverse effect on Stonehenge to the detriment of current and future generations. Therefore the interference on the specific occasions with the appellants' rights under articles 9, 10 and 11 of the ECHR was justifiable and proportionate. This meant that the Crown Court was entitled to be sure that the appellants did not have a reasonable excuse for entering the stone circle on the relevant days when entry had been restricted by the rope barrier and notice.

**Conclusion and answers to the stated questions**

50. For the detailed reasons set out above I would answer the stated questions as follows: (1) the Court was not wrong when it reached its determination on proportionality because there was sufficient evidence to show that the restrictions on the appellants' rights were justifiable and proportionate; and (2) the Court was not wrong in its analysis of regulation 3(h) of the Stonehenge Regulations because, on the relevant facts, the appellants did not have a reasonable excuse for entering the stone circle at Stonehenge to which access was restricted by barrier and prohibited by notice.
51. I would therefore dismiss the appellants' appeals against conviction.

**Mrs Justice Steyn:**

52. I agree.