



Press Summary

14 July 2026

R (Respondent) v McCafferty and others (Appellants)

[2026] UKSC 20

On appeal from: [2025] EWCA Crim 748

Justices: Lord Reed (President), Lord Sales (Deputy President), Lord Leggatt, Lady Simler and Lord Doherty

Background to the Appeal

Section 78 of the Police, Crime, Sentencing and Courts Act 2022 replaced the common law crime of public nuisance with a statutory offence. The offence can be committed in either of two ways. One way (the first limb) is by an act or omission which “creates a risk of, or causes, serious harm to the public or a section of the public”. The other way (the second limb) is by an act or omission which “obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large”. This appeal is about the scope of the second limb.

On 8 September 2022, the six appellants (“the defendants”), members of a group called “Animal Rebellion”, took part in a protest outside a dairy works owned and operated by Müller UK. The Müller site is on private land and is only accessible by a private road called Pointon Way. The defendants obstructed access to the Müller site by either chaining themselves to temporary fencing which had been placed on Pointon Way outside the entrance to the site or by sticking themselves to the road surface with glue. They remained there for around four hours before being arrested. During that time, no vehicles could enter or leave the Müller site. Those affected included employees who had finished working on a night shift and could not drive home.

The defendants were charged with an offence under section 78(1)(b)(ii) of the 2022 Act (the second limb). They pleaded not guilty and were sent to the Crown Court for trial. At the end of the prosecution case, the judge ruled that there was no case for them to answer. He accepted the defendants’ argument that, because Pointon Way is a private road leading to private premises, there was no evidence before the jury that they had obstructed the exercise or enjoyment of “a right that may be exercised or enjoyed by the public at large”. On the prosecution’s appeal, the Court of Appeal (Criminal Division) allowed the appeal and made an order for the Crown Court proceedings to resume. The jury was discharged to enable the

defendants to seek permission to appeal to the Supreme Court. The Court of Appeal certified that the proposed appeal raised a question of general public importance as follows:

“Are persons who go to private business premises, whether as employees, customers, suppliers or for some other reason connected with the business, a section of the public exercising or enjoying a right which may be exercised or enjoyed by the public at large, within the meaning of section 78(1)(b)(ii) of the Police, Crime, Sentencing and Courts Act 2022, when they (a) approach, (b) enter and/or (c) leave the premises?”

Judgment

The Supreme Court unanimously allows the appeal. Lord Leggatt gives the main judgment, with which Lord Reed, Lady Simler and Lord Doherty agree. Lord Sales gives a judgment concurring in the result.

Reasons for the Judgment

There is a legal distinction, which is well understood, between a right of way or other right to use land and a mere licence or permission from the owner or occupier to do so. There is no evidence to suggest that the public at large have been granted permission to use Pointon Way, let alone a right to do so. Indeed, it is clear that they have not from a sign displayed on Pointon Way stating “PRIVATE LAND CCTV is in operation and no trespassing is permitted”. Only those visiting the Müller site (or other business premises on the same industrial estate), whether as employees, customers, suppliers or for some other reason connected with the business, may lawfully pass along the road. That is so even if other use of the road is tolerated in the sense that, apart from the display of the sign, no active steps are taken to prevent it. The Court therefore rejects a concession made by the defendants and accepted by the Court of Appeal that the public at large have a right to pass along Pointon Way [18]-[19].

Even if the general public had been granted permission to use the road, the language of section 78(1)(b)(ii), in using the word “right”, is clear and would not reasonably be understood to include a licence or permission [20]. Even if the word “right” is regarded as ambiguous, it should not be interpreted as including a permission or licence. It is an important principle that a person should not be subjected to a criminal penalty based on a doubtful interpretation of the law, especially where the penalty involves depriving a person of their liberty [21]-[22]. To interpret the word “right” as including a permission granted to the public at large is also objectionable because it would involve drawing arbitrary and uncertain distinctions between permissions granted to all members of the public and permissions granted to many, or all but a few, members of the public and would make the question whether a criminal offence has been committed depend on the precise scope of the permission [23].

The historical context of section 78 supports this interpretation. Under the common law, there were two types of public nuisance. One type, enacted as the first limb of the statutory offence, involved a wide range of conduct which caused hazard or annoyance to the general public, for example by creating loud noises or noxious smells [41]. The other type, enacted as the second limb of the statutory offence, involved cases of obstructing free passage along a highway (or a navigable river) [27].

The essential characteristic of a highway at common law is that it is a way, following a defined route, over which all the King’s subjects (or in modern parlance the public at large) have a right to pass freely. A private way or other way not open to the public at large is not a highway [31].

The 2022 Act implements recommendations made by the Law Commission in a report of 2015 [48]. The Law Commission report supports the view that the two limbs of the statutory offence

are aimed at different mischiefs. The first limb is aimed at conduct which causes or has the potential to cause serious annoyance or other serious harm to a section of the public. The second limb is aimed at conduct which obstructs the exercise of a right that belongs to all members of the public, the paradigm case being the right of passage along a highway [55].

The Court also rejects the Crown’s fallback argument that, even if the public at large have no right to enter the Müller site, they have the right to leave the premises so that the offence was committed by impeding people who were on the site from leaving. Anyone who enters the Müller site without permission remains a trespasser until they leave the site and does not cease to be trespassing when they decide to leave or head towards the exit. A person whose passage is impeded when on the way out is therefore not obstructed in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large [68]-[69].

The Court answers the certified question as follows. Persons who go to private business premises for a reason connected with the business are not exercising or enjoying a right which may be exercised or enjoyed by the public at large within the meaning of section 78(1)(b)(ii) of the 2022 Act when they enter or leave the premises. That is because the public at large do not have a right to be on private premises. People may lawfully visit the premises only if they have been given permission by the owner or occupier to do so. They are also not exercising such a right when approaching the premises, if the land over which they are passing is a private road and not a highway. What distinguishes a private way from a highway is that the public at large does not enjoy a right to use it.[71]-[72].

Since at the trial the prosecution did not apply to amend the indictment to allege another offence such as an offence under the first limb of section 78 or an offence of aggravated trespass, there is no basis for reversing or varying the trial judge’s ruling that there was no case to answer. The result of confirming that ruling is that the Court must order that the defendants are acquitted [77]-[80].

Lord Sales adds a concurring judgment. In his view the word “right” in section 78 is ambiguous and capable of bearing many meanings [109]. It does not have an obvious natural meaning in the context of section 78, and it is therefore necessary to approach its meaning as a question of statutory construction, having regard to the relevant interpretive indications. Those indications include the particular circumstances of the enactment of section 78, and the constitutional background to the provision. Having regard to those indications, the balance comes down firmly in favour of the narrow interpretation of the word “right”, as identified by Lord Leggatt and the majority [122].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)