

Comment on Fracking and the scope for public dissent.

The recent ELR case comment ¹ on 'fracking and the scope for public dissent' is interesting, but perhaps lacks balance.

Hawkins sets out the legal process regarding one particular case regarding fracking protestors and some of the wider context. She argues that this case is "but one manifestation of the increased use of legal mechanisms to restrict protest". She raises and critiques some of the recent events around fracking in the UK.

The initial custodial sentence for the cited case always seemed excessive and a surprise to observers. As Hawkins sets out this raised widespread concern. The full legal process overturned that with an initial community sentence being deemed appropriate. There is no doubt that the right to protest should be upheld, everyone should be free to express their view and be treated fairly before the law.

Hawkins moves on, in the comment and wider implications, to suggest the protestor actions were understandable because "legal challenge is difficult to establish", of a "lack of scope for challenge" and a "perceived lack of scope for dissent". I respectfully suggest care should be taken both in the form of protests and on wider inferences in case commentary.

The merits of these planning and judicial decisions, fracking, the overall process and whether there is just cause for unlawful protest can be debated, but before that the case comment has a crucial omission which needs to be examined.

The case comment appears to be positioning the fulcrum of the issue between the rights of protestors to act as they wish and the use of judicial processes and police powers to "restrict protest". That misplaces the need for balance. Regrettably, the case comment omits consideration of the balance required between the rights of protestors, on the one hand, and the rights of parties affected by the protest, on the other.

The use of judicial process and police powers perhaps arises because the actions of protestors have impinged on the rights of others. The consequence of protestor action in the case cited and in other blockage protests have inhibited the rights of others. Indeed, that appears to be its intended purpose. Two other parties' rights were adversely affected by the protest which led to the cited case. The public at large were hindered in their entitlement to use the public highway, particularly for the period when the protest resulted in road closure. The developer, Cuadrilla, were also hindered in their right to go about their lawful business for several days.

The key point, which the case comment seems to overlook, is the possibility of the judicial system affording consideration to affected party rights. A possible explanation from the outcome of all the various proceedings is that the courts have been seeking to strike a balance between the rights to protest and the rights of others not to be excessively hindered by protestor action. It is perfectly legitimate to deduce that the courts are not necessarily seeking to curb or confine the right to protest. Rather the judgements are seeking to facilitate protest appropriately so that the protestors do not undermine the rights of others. That seems to be a fair and proper balance, which the law should uphold. Perhaps the various courts involvement arises because the protestors have failed to strike this balance themselves.

This raises questions on whether the wider implications of the case comment, on the alleged understandable protestor conduct due to restricted scope for dissent, need to be revisited. Does this fresh perspective need to be taken into account? Is it possible the judicial outcomes reflect a recognition that the protests have had an adverse impact on others' rights?

¹Hawkins J. *Case Comment - Fracking and the scope for public dissent*. Environmental Law Review. 2019 Vol21(2) 128-135.