

## **Factsheet: the Attorney General's Referral of a Protest Case to the Court of Appeal**

### **What has the Attorney General decided?**

The Attorney General has decided to refer questions of law to the Court of Appeal concerning the proper scope of defences to criminal charges arising from protests, and the directions which should be given to juries in such cases.

The Court of Appeal will be asked to clarify the law around whether someone can use a defence related to their human rights when they are accused of criminal damage. The Court will also consider whether juries should be asked to decide if a conviction for criminal damage is a 'proportionate interference' with the human rights of the accused, particularly the right to protest and freedom of expression.

In the Colston statue case, the judge directed the jury that, before they could convict, they must be sure that doing so would be compatible with the defendants' exercise of their rights to freedom of thought and to freedom of expression.

### **Does this change the outcome of the case?**

No. The outcome of this case is unaffected.

### **Is this a political decision?**

No, this is a legal matter which is separate from the politics of the cases involved. The power has been used 19 times since 2000. The last time this power was used was in December 2020 when the Attorney clarified the law in relation to sexual assault: <https://www.gov.uk/government/news/attorney-general-clarifies-law-on-sexual-assault>

### **What is the power by which you can refer this to the Court of Appeal?**

The Criminal Justice Act 1972 provides the Attorney General with a power to refer a point of law to the Court of Appeal. This power arises where a defendant has been acquitted in the Crown Court of an offence or offences.

### **What does 'acting in the public interest' mean?**

The Attorney General performs several duties in the public interest, independently of Government. The public interest in this case is to clarify the law around what does and does not amount to a defence to offences arising from protests. The Court of Appeal's decision will make that clear for any future cases.

### **Did the government have a say in the Attorney General's decision?**

No. The Attorney General acts independently of government when performing functions in the public interest, separate and distinct from her role as the government's chief legal advisor.

### **Why are you picking one defendant's case to refer to the Court?**

This power does not involve changing the result in a defendant's case. Instead, it is important to put before the Court the issues which arose in the case. That can be done clearly and helpfully by referring one individual in whose case all the relevant issues arose.