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| **Neutral Citation No: [2026] NIMag 1** | *Ref:* | **[2026]NIMag 1** |
| | *ICOS No:* | **25/015259** |
| ***Judgment: approved by the court for handing down (subject to editorial corrections)**** | *Delivered:* | **07/05/2026** |

**IN THE MAGISTRATES' COURT IN NORTHERN IRELAND**

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**DIRECTOR OF PUBLIC PROSECUTIONS**

**Complainant**

**v**

**CLIVE JOHNSTON**

**Defendant**

_____

**JUDGMENT**

_____

**DJMC PETER KING**

***Introduction***

[1] The defendant appears to answer two complaints on a summons dated 14 February 2025, the complaints having been made to a lay magistrate on 3 January 2025:

> "On the 7th day of July 2024 at in the vicinity of Causeway Hospital, Newbridge Road, Coleraine did an act, in a safe access zone, namely conducted a protest with the intent of, or being reckless as to whether, it had the effect of influencing a protected person whether directly or indirectly in connection with the protected person attending premises for a purpose mentioned in section 3 of the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023, contrary to Section 5(2) of the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023."

> "That you, on the 7th day of July 2024, at in the vicinity of Causeway Hospital, Newbridge Road, Coleraine failed to comply with a direction under section 6 (1)(a) of the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 to leave a safe access zone, contrary to

> Section 6(4) of the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023"

[2] Section 3 of the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 ("the 2023 Act") states:

> "In this Act, a protected person is a person attending a protected premises for the purpose of-
>
> (a) accessing the treatment, information, advice or counselling there,
>
> (b) accompanying a person described in paragraph (a), at the invitation of that person, or
>
> (c) working in, or providing services to, the protected premises."

[3] The section 5 offence in punishable by a fine not exceeding level 2 (£500.00) of the standard scale, the section 6 offence by a fine not exceeding level 4 (£2,500.00).

***Evidence***

[4] The 7 July 2024 was a Sunday.

[5] There is no dispute that the defendant was within a Safe Access Zone ("SAZ") as defined by the 2023 Act at the material time. Indeed, the evidence from Inspector O'Brien makes it clear that police were aware from at least 3 July 2024 that the defendant was going to be within the SAZ at the material time for the purpose of a "Return to the Cross-NI" event.

[6] The court was provided with an e-mail chain which confirms this.

[7] Inspector O'Brien sent an e-mail to the defendant at 16:28 on 3 July 2024 with the subject "OFFICIAL [PUBLIC]: Causeway Hospital 7/7/24" referencing an earlier conversation and providing links to the relevant statutory provisions.

[8] The defendant replied on 4 July 2024 in the following terms:

> "Dear Inspector O'Brien,
>
> Thank you for the conversation yesterday which was very helpful and thank you for the information you sent in the e-mail. Praying that our Open Air Service will be held graciously and peacefully."

[9] This inspired the Inspector to respond at 17:06 on 5 July 2024:

> "I have discussed our conversation with senior police and also legal advisors in the Police. From the information you have provided to me of your intended actions, I must warn you that, if conducted in the safe access zone, it will give rise to a reasonable suspicion that you have committed an offence. Police will be required to take enforcement action.
>
> I will be on my work phone from 12pm on Sunday if you wish to discuss further."

[10] Inspector O'Brien gave evidence before me on 12 December 2025. The conversations referred to in the e-mail chain took place once the police became aware that a group wished to hold a "gospel outreach" at the SAZ. As part of that discussion the defendant indicated to the Inspector that the event would take place on 7 July 2024 at 15:00 hrs. The legislation, knowledge of the SAZ and police legal advice were discussed. The Inspector left the defendant in no doubt well in advance of 7 July that his proposed actions may constitute an offence.

[11] The Inspector, with other police, attended at the Causeway Hospital at approximately 14:30 hrs. He activated his body worn camera at 15:04 hrs and the court viewed footage from then until 15:41 hrs. From this it is clear that there were no posters, banners or placards at the event. There were no leaflets being handed out and the only "accessory" at the event was a large wooden cross. At the locus there were about nine persons with the defendant singing and playing a ukulele and addressing the gathering through a PA system. From the footage, I am happy to agree with the Inspector's description that the defendant's address as being of a religious nature. When it was put to him in cross examination that the term "abortion" was not used at all Inspector O'Brien agreed that he had not heard the word "abortion" and indeed confirmed that there had been a prior undertaking not to mention "abortion" or to have any leaflets. The Inspector confirmed that he did not see any placards during his interaction with the defendant.

[12] The footage captured an almost endlessly patient Inspector O'Brien dealing with the defendant and his group up to the point when he took the operational decision to move from "engagement, explanation and encouragement" to enforcement. He warned the group that failure to leave the SAZ would cause a breach of section 6of the 2023 Act with the possibility of prosecution. The bulk of the group started to move away but the defendant remained. He was then warned in the following terms:

> "Attention. Attention. You have been directed to leave a safe access zone by Police and failed to do so. If you do not leave the zone immediately Police may remove you. If you resist being removed you are liable to prosecution."

The defendant failed to comply, having responded "I am not moving." He was then cautioned in the terms contained in Article 3 of the Criminal Evidence (Northern Ireland) Order 1988. He did not make any reply ultimately leaving the SAZ. The time taken from the requirement to leave being put to the defendant actually leaving was less than 10 minutes. Inspector O'Brien's evidence was that once the defendant was cautioned he asked him "if this was over" to which the defendant replied "yes" at which point he left. In evidence the Inspector stated that his understanding was that any person requested to leave by police in pursuance of their powers under the 2023 Act had to do so "immediately."

[13] In addition, Inspector O'Brien provided the court with a transcript from a BBC Radio Ulster interview with the defendant broadcast on 7 December 2022 when he appeared as a spokesman from "Abolish Abortion Northern Ireland."

[14] When asked by the interviewer if he would respect a "buffer zone" he replied:

> "We are not simply because we can't, we are commanded to love our neighbour and that means love our unborn neighbour and that means to love those, Book of Proverbs 24-11 says to rescue those that are being led to death … and it's actually a mandate from God that we have a higher law in play there and that is to share the good news of Jesus."

[15] When pressed if he would ignore the law and take the consequences he responded with an unequivocal "Absolutely."

[16] His last comment to the interviewer is:

> "so, any bad law that a government makes, there is a higher law in play and that is the law of God."

[17] At the time of the alleged offences before this court, I accept that he was no longer a member of that organization which was by then defunct.

[18] Under cross examination on this interview his evidence was that he had moved on from the state of mind he had when being interviewed.

[19] When Mr Johnston gave evidence he confirmed that he was a retired Baptist pastor. As such, he confirmed he was "a Bible believing Christian" who believed in the sanctity of life and that he was "pro-life."

[20] He addressed the content of the radio interview by stating that when the law changed in respect of abortion his approach to the issue changed. That change caused a refreshed call from God to move away from protest and move back to his initial calling to preach the Gospel. As a result, the defendant told the court he called together a group named "Return to the Cross" as now the law had changed what was required was a "change in hearts." His sworn evidence was that from this moment protest was no longer where he "wanted to be."

[21] In respect of 7 July, the defendant testified that the choice of a Sunday was deliberate for two reasons: firstly, it is the Christian day of worship and, secondly, it was his understanding that no abortions were to take place on that day of the week.

[22] As for the event itself, he confirmed that there were absolutely no placards and that the undertakings given in advance to Inspector O'Brien on this particular issue were adhered to. His evidence was that the event was an "open air sharing of the message of Christ" and that his group would have distanced themselves from anyone who had shown up with placards etc. All that the defendant had was a ukulele, a cross, a Bible and a PA system and that the police body worn footage played was an accurate reflection of the event.

[23] His evidence about the message he was sharing was that:

> "God's grace can change hearts, it changes everything, gives a different perspective to life on many things not just abortion."

[24] In cross-examination the unchallenged statement of Jeremy Foster was put to the defendant. Mr Foster at the time of making the statement on 5 February 2025 was the Assistant Director of Corporate Support Services for the Northern Health and Social Care Trust. He confirmed that that Trust's Sexual and Reproductive Service Provides "7 days per week abortion service." Specifically, "on Sunday 7th July 2024, our clinical lead provided therapeutic aftercare as part of the NHSCT Abortion Service."

[25] It was put by counsel that at least one protected person was at the hospital at the time of the protest and the objective of the event was to protest. Mr Johnston maintained that the purpose was to preach to all and sundry, but he accepted that whilst it was his understanding that scheduled abortions would not take place at the time of his event he had not taken any steps to check the veracity of this belief because his presence had nothing to do with abortions but to "preach about the love of Jesus."

[26] At this point it was put to Mr Johnston that his hope was to influence, Mr Johnston replied by stating that the event was to influence all people. He was there to bring a message of hope and grace.

[27] When asked why he chose to be within the SAZ the defendant agreed that he was deliberately in the SAZ because he was concerned about freedom of speech and religious expression. Under further questioning he agreed that his intention was to test the law.

[28] He volunteered that every time he preached he hoped someone might respond and that his preaching at the event in question was designed to "influence people towards the bible" as he was a "channel, to present a message." What he was doing was answering a higher calling, to share the message, to preach.

[29] As for his response to the police direction to leave the SAZ the defendant agreed when it was put to him that he decided not to leave. He further confirmed that it was a deliberate decision not to go.

[30] Mr Johnston is of good character, and I have reminded myself of the appropriate direction a Crown Court would provide for a jury.

[31] I also heard from Mr Michael Owen. I believe him to be an honest but mistaken witness. His evidence given under affirmation was that on the day in question at about 14:30 hrs he observed four or five persons with three large placards between them with anti-abortion messaging. He did not recall seeing a cross. This is so at odds with the police body worn footage, the evidence of both Inspector O'Brien and Mr Johnston that I cannot accept it. As I said earlier, I believe this witness has made an honest mistake as to when he saw what he did and provided his evidence in good faith to assist the court.

***The body worn footage***

[32] Two issues from the footage exemplify the difficulties all sides have in understanding the legislation surrounding SAZs.

[33] Inspector O'Brien seems to suggest that any filming within the SAZ is prohibited. That is not correct, section 5(3) of the 2023 Act states:

> "It is an offence for D to record a protected person who is in a safe access zone without the consent of that person, with the intent, or reckless as to whether it has the effect of-

(a) Influencing a protected person, whether directly or directly,

(b) Preventing or impeding access by a protected person, or

(c) Causing harassment, alarm or distress to a protected person,

In connection with the protected person attending protected premises for a purpose mentioned in section 3."

[34] Mr Johnston is also captured in the footage operating under a misapprehension. He is clearly heard referencing guidance from the former Home Secretary, Sir James Clerverly. I am content that this is a reference to draft guidance put out for consultation in respect of the provisions of the Public Order Act 2023 which at section 9 created SAZs in England and Wales and offences analogous to those the defendant faces here. Those provisions and the draft guidance never applied to Northern Ireland, section 35 of the Westminster Act limiting it to England and Wales only. The defendant was referencing material irrelevant to the statutory framework in Northern Ireland which he was in the process of testing.

***Findings on the facts***

[35] Applying the criminal standard of proof I find the following facts:

(i) The defendant had been a presence on local media prior to the material dates expressing anti- abortion views.

(ii) At the material time on Sunday 7 July 2024 the defendant was within a Safe Access Zone established in accordance with section 4 of the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023.

(iii) He was not there as a protected person.

(iv) At that stage he had been made aware in advance by police that he was at risk of offending against the 2023 Act.

(v) He made no checks to ascertain whether or not abortion services were being provided at the Causeway Hospital on that day.

(vi) At that time the NHSCT at the Causeway Hospital provided a seven days a week abortion service and on that day the clinical lead was delivering therapeutic aftercare as part of that service. Accordingly, there were

protected persons attending the Causeway Hospital on Sunday 7 July 2024 for a purpose mentioned in section 3 of the Act.

(vii) He was there along with a number of others as part of a "Return to the Cross" event.

(viii) Police had been given prior warning of the event and discussions between police and the defendant had taken place in the days leading up to the event.

(ix) There were no anti-abortion placards displayed at the event, the sole visible indication of the event was a large wooden cross.

(x) The defendant delivered a Christian sermon at the event refraining from any mention of abortion.

(xi) His decision to preach within the SAZ was motivated by two reasons: to test the legislation and to influence anyone who heard him towards the bible and the Christian message generally.

(xii) He was directed to leave the SAZ by police exercising their powers under section 6 of the 2023 Act.

(xiii) He left the SAZ some ten minutes after the police direction, his failure to abide by the direction at the time it was made was a deliberate choice on his part despite having opportunity to do so.

***Background***

[36] The now section 5(2) of the 2023 Act was subject to challenge in *Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32 which was heard by a panel of seven including Keegan LCJ.

[37] The background to that challenge is neatly summarized in the first five paras of the judgment delivered by Lord Reed:

(i) On 24 March 2022 the Northern Ireland Assembly ("the Assembly"), the devolved legislature for Northern Ireland, passed the Abortion Services (Safe Access Zones) (Northern Ireland) Bill ("the Bill"). The Attorney General for Northern Ireland ("the Attorney"), who is the chief legal adviser to the Northern Ireland Executive Committee ("the Executive"), the devolved government of Northern Ireland, has referred to the Supreme Court the question whether a particular provision of the Bill would be outside the legislative competence of the Assembly, under section 11(1) of the

Northern Ireland Act 1998 ("the Northern Ireland Act"). The reference is made in respect of clause 5(2)(a) of the Bill, which is set out below.

(ii) The Bill is intended primarily to protect the right of women to access services relating to the lawful termination of pregnancy. It addresses the problem that women wishing to access such services have been subjected to pressure by anti-abortion protesters not to do so, which has prevented some women from accessing those services. It aims to achieve its objectives by making provision for the designation of "safe access zones" adjacent to the premises where such services are provided, within which specified types of behaviour are prohibited. Clause 5(2)(a), in particular, would make it an offence "to do an act in a safe access zone with the intent of, or reckless as to whether it has the effect of – (a) influencing a protected person, whether directly or indirectly."

(iii) The Attorney submits that this provision is a disproportionate interference with the freedom of conscience, speech and assembly of anti-abortion protesters and demonstrators: rights which are protected by articles 9, 10 and 11 of the European Convention on Human Rights ("the Convention") and given effect in domestic law by the Human Rights Act 1998 ("the Human Rights Act"). Those articles provide, so far as relevant:

> "Article 9
>
> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes ... 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 ...

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 ...

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."

(iv) The parties' submissions focus primarily on articles 10 and 11. It is not suggested that the principles in issue in the present case are significantly affected by which article is examined, or that the differences between the articles have any material impact upon the protection afforded to demonstrators or protesters by the Human Rights Act for the purposes of this reference.

Counsel for the Attorney submit that since clause 5(2)(a) of the Bill creates an offence which is unqualified by any defence of lawful or reasonable excuse, it cannot be read or applied in a way which would permit an assessment of the proportionality of any restriction of protesters' rights under articles 9, 10 and 11 in individual cases. On that basis, counsel submit that clause 5(2)(a) results in a disproportionate interference with the rights protected by those articles, and is therefore outside the legislative competence of the Assembly. In that regard, they refer to section 6(2)(c) of the Northern Ireland Act, which provides that a provision is outside that competence if it is incompatible with any of the Convention rights. In making that submission, counsel rely on the decision of this court in *Director of Public Prosecutions v Ziegler* [2021] UKSC 23; [2022] AC 408 ("*Ziegler*"), and in particular on dicta which they interpret as

meaning that an assessment of proportionality must always be based on the facts of an individual case. They also rely on the decision of the Divisional Court in *Director of Public Prosecutions v Cuciurean* [2022] EWHC 736 (Admin); [2022] 3 WLR 446 ("*Cuciurean*"), which they interpret as meaning that there cannot be an assessment of proportionality in criminal proceedings unless the ingredients of the offence include the absence of a lawful or reasonable excuse.

(v) Accordingly, the question referred by the Attorney is:

> "whether the penal sanction with no provision for reasonable excuse created by clause 5(2)(a) of the Bill is outside the legislative competence of the Northern Ireland Assembly by virtue of section 6(2)(c) of the Northern Ireland Act as it involves a disproportionate interference with the article 9, 10 and 11 rights of those who seek to express opposition to the provision of abortion treatment services in Northern Ireland."

Counsel for the Attorney invite the court to answer that question in the affirmative.

[38] The court did not answer in the affirmative and the Bill completed its legislative passage receiving Royal Assent on 6 February 2023, Lord Reed having concluded:

> "155. … if the ingredients of an offence under clause 5 are established, then a conviction of the offence will not be a disproportionate interference with the defendant's Convention rights under articles 9 to 11. It follows that it cannot be incompatible with the Convention for an operator to notify the Department under clauses 1(3), 2(4) or 4(3). For the same reason, there is no risk that any action by the Department of Health in response to such notification will be incompatible with those Convention rights. Furthermore, designation as protected premises, and the extension of a safe access zone, are not in any event dependent on any decision by the Department of Health. Notification of the Department by the operator is in itself sufficient to give the premises the status of protected premises. As regards the courts, there is no proportionality assessment required when a defendant is being tried for an offence under clause 5. That is because either the defendant's conduct will not engage articles 9 to 11, for example because it is violent, or, if rights under

> those articles are engaged, the proportionality balance has been struck by the Bill itself.
>
> 156. The right of women in Northern Ireland to access abortion services has now been established in law through the processes of democracy. That legal right should not be obstructed or impaired by the accommodation of claims by opponents of the legislation based, some might think ironically, on the liberal values protected by the Convention. A legal system which enabled those who had lost the political debate to undermine the legislation permitting abortion, by relying on freedom of conscience, freedom of expression and freedom of assembly, would in practice align the law with the values of the opponents of reform and deprive women of the protection of rights which have been legislatively enacted."

[39] Helpfully, the Supreme Court referenced the judgement in *Clubb v Edwards* [2019] HCA 11:

> "151. The argument that there was no need to proscribe non-violent protests was also rejected. The judges observed that "non-violent protest … may well be apt to shame or frighten a pregnant woman into eschewing the services of a clinic" (para 88). They added (para 89):
>
> > 'Silent but reproachful observance of persons accessing a clinic for the purpose of terminating a pregnancy may be as effective, as a means of deterring them from doing so, as more boisterous demonstrations.'"

That observation is strongly supported by the evidence in the present case.

***Discussion***

[40] I have gratefully received from both sets of counsel written submissions amounting to almost fifty closely typed A4 pages. I do not intend to embark on a line by line analysis of same, but each and every point raised has been taken into consideration in this judgment.

[41] I make no apology for quoting extensively from the Supreme Court judgment. That court has "done the heavy lifting" in respect of a number of issues brought

before this court and for reasons I will explore below it is important that it is clear that my reasoning is based upon that judgment.

[42] The defendant's protected rights under articles 9, 10 and 11 of the ECHR are clearly engaged. No one is disputing that those rights are qualified, the defence contend that they have been interfered with in the current case in a manner not permitted in law.

[43] I am asked to contextualise Lord Reed's judgement on this point using *JR 123* [2025] UKSC 8 and *JR 87 & another* [2025] UKSC 40 and assess the proportionality of the prosecution. Should I agree to launch such an exercise the defence would point me to examples of recent Strasbourg jurisprudence including *Peradze and others v Georgia* (15 December 2022).

[44] The courts in the United Kingdom each have their place in the court hierarchy allowing for the doctrine of precedent to be easily understood and applied. Magistrates' courts, creatures of statute without any inherent jurisdiction, sit at the bottom rung of that hierarchy bound by decisions of the courts that sit above. The Supreme Court, at the very apex of the structure, has found that in cases involving the former clause, now section 5 of the 2023 Act a proportionality assessment is not required.[1] This court is bound by that decision and will decline the invitation to conduct such an assessment, it being unnecessary as the proportionality balance has been struck by the legislation itself. This court is to determine if the ingredients of the offence under section 5 have been established to the necessary standard, the Supreme Court having decided that a conviction following that exercise would not be a disproportionate interference with a defendant's Convention rights.

[45] The prosecution case is simply stated at paragraph 20 of their skeleton argument where they contend "that the defendant's acts were capable of influencing protected persons." Lord Reed uses the phrase "liable to cause."[2]

[46] The defence, through oral submissions and their skeleton argument take issue with that proposition and at paras [18] to [28] parse the legislation. It is worth repeating paras 21 and 23 of that skeleton:

> "21. Section 5(2) contemplates in paras (a) to (c) three modes of conduct: 'influencing'; 'preventing or impeding access'; causing harassment alarm or distress.' All three of these must be "in connection with the protected person attending protected premises for a purpose mentioned in section 3.

[1] See paragraph 38 above

[2] As per Lord Reed at paragraph 121 [2022] UKSC 32

> 22. It is suggested by the Prosecution that there is no requirement to establish that there was, when the 'act' in section 5 (2) was committed, a protected person at whom the act was aimed and who was, at the time of this 'act', "attending protected premises for the purpose mentioned in section 3.
>
> 23. Given the nature of the evidence adduced on December 17 2025 it is, perhaps, on a jaundiced view, understandable that the Prosecution should advance such a submission, no evidence whatsoever having been adduced of a protected person 'attending protected premises for a purpose mentioned in section 3.'"

[47] The prosecution counter this at para 29 of their skeleton:

> "… it is obvious that section 5(2) (a) refers to a notional protected person."

[48] Again, at paragraph 30:

> "If the Assembly had intended to require the prosecution to prove the actual presence of a protected person in section 5(2), it could easily have worded accordingly."

[49] From experience in this court, an example of the type of wording referred to by the prosecution is found in section 1 of the Protection from Stalking Act (Northern Ireland) 2022. When defining a prohibited course of conduct that act says at section 1.1(b):

> "(b) A's course of conduct—
>
> (i) causes another person ("B") to suffer fear, alarm or substantial distress, or
>
> (ii) is such that a reasonable person, or a reasonable person who has any particular knowledge of B that A has, would consider to be likely to cause B to suffer fear, alarm or substantial distress …"

[50] At this point it is useful to recall the agreed evidence of Jeremy Foster and my finding that:

> "… there were protected persons attending the Causeway Hospital on Sunday 7th July 2024 for a purpose mentioned in section 3 of the Act."

[51] The indefinite article "a" when preceding "protected person" throughout section 5(2) is suggestive of a notional protected person. The definite article "the" used in the phrase "in connection with the protected person" appears after the phrase "a protected person" has been used three times. I am satisfied that this references back to the established notional protected person. I am reinforced in this view by contrasting the wording of section 5(2) with section 5(3) - the offence created by the latter clearly requires an identifiable complainant.

[52] I am also satisfied that what is prohibited by section 5 is behaviour. I repeat what Lord Reed states at the beginning of his judgment at para [2]:

> "It [the Bill, now Act] aims to achieve its objectives by making provision for the designation of "safe access zones" adjacent to the premises where such services are provided, within which specified types of behaviour are prohibited."

[53] Then later at para 106:

> "Clause 5 prohibits certain types of behaviour within a Safe Access Zone."

[54] Again, at paragraph 121:

> "Putting the matter broadly, clause [now section] 5(2) as whole prohibits behaviour in the immediate vicinity of abortion clinics which, intentionally or recklessly, is ***liable*** [my emphasis] to cause women not to access the health care services available there."

[55] The Explanatory Note in respect of section 5 states:

> "This is a key section which criminalises certain behaviour in the safe access zone …"

[56] This court is well used to hearing cases where "behaviour" is an issue without the presence of an identified complainant. The obvious examples are allegations of "disorderly behaviour" contrary to Article 18(1) of the Public Order (NI) Order 1987 or "behaviour whereby a breach of the peace is likely to be occasioned" contrary to Article 18(2) of the same Order. A more recent example and an offence created by

the Assembly is "threatening or abusive behaviour" contrary to section 2 of the Protection from Stalking Act (NI) Act 2022.

[57] The legislation which brings us here has been "stress tested" by the highest court in the land which has found it compatible with the Convention rights engaged in this case. I accept that the 2023 Act is broad in its application and at paras 31 to 47 the defence skeleton contrasts the behaviour which could be captured by the Northern Ireland legislation to that captured in England and Wales and Scotland. The points are well made but would have been apparent to the Supreme Court. And yet the challenge to what is now section 5(2)(a) failed.

[58] On this point I accept the interpretation offered by the prosecution.

***Conclusion***

[59] The legislation which gives rise to the complaints faced by Mr Johnston restricts how anyone, not just a retired Pastor preaching the Gospel, can behave within the narrow and well-defined confines of the SAZ. Those restrictions were found to be justifiable as "there is a pressing social need for such restrictions to be imposed, in order to protect the rights of women seeking treatment or advice, in particular, and also in the interests of the wider community, including other patients and the staff of clinics and hospitals."[3] It is also important to recognise that the 2023 Act is legislation enacted by the Northern Ireland Assembly, democratically elected and subject to almost unique checks and balances on its operation.

[60] It hardly needs to be said, but Mr Johnston is a man of strong religious belief and good character. He is also someone who in the past has been publicly associated with anti-abortion views having articulated same on the local media.

[61] He deliberately placed himself within the SAZ on 7 July 2024 after prolonged prior contact with the police. That contact included a discussion of the provisions of the 2023 Act and the SAZ. He was aware that he was at risk of breaching the provisions of that Act, but he did not divert from the course he had set. This was a preplanned event, with absolutely no subterfuge with the intent of both testing the 2023 Act and influencing through the Gospel anyone who heard his sermon. Given the planning that went into the event I am surprised that Mr Johnston did not take steps to accurately ascertain whether or not abortion services were being provided that Sunday. He thought not, he was wrong. At some stage on that Sunday at least one protected person was attending the Causeway Hospital accessing therapeutic aftercare as part of the NHSCT Abortion Service and, it follows, at least one other providing that service. In the same vein, I was further surprised that he appeared to rely on for cover for his acts guidance with no application in Northern Ireland.

[3] Per Lord Reed at paragraph 154 [2022] UKSC 32

[62] The manner in which Mr Johnston dealt with Inspector O'Brien's request to leave the SAZ, whilst polite, is entirely consistent with someone determined to test the 2023 Act. I am confirmed in that view by his response, captured on film - "I am not moving." He did leave within 10 minutes not at the direction of the Inspector but rather at a moment of his choosing, his purpose fulfilled.

[63] Applying the elements of the section 5(2) offence I am satisfied that at the material time:

(i) Mr Johnston was not a protected person.

(ii) He was within a safe access zone.

(iii) He was doing an act, in this case preaching the Gospel, intending that any person hearing it would be influenced whether directly or indirectly.

(iv) He was reckless as to whether a protected person in connection with them attending at the Causeway Hospital for a section 3 purpose hearing it would be influenced whether directly or indirectly.

[64] Undertaking the same exercise with the section 6(4) offence:

(i) In the context of all his interactions with the defendant both on 7th July 2024 within the SAZ and in the days before Inspector O'Brien had ample reasonable grounds to believe that a section 5(2) offence was being committed by the defendant.

(ii) Accordingly, he had the power to direct him to leave the SAZ.

(iii) The defendant failed to comply with that lawful direction, leaving at a time of his own choosing.

[65] Mr Johnston tested the law to the point where he broke the law.

***Devolution issue***

[66] Schedule 10 to the Northern Ireland Act 1998 provides:

> "1. In this Schedule "devolution issue" means—
>
> (a) a question whether any provision of an Act of the Assembly is within the legislative competence of the Assembly;

(b) a question whether a purported or proposed exercise of a function by a Minister or Northern Ireland department is, or would be, invalid by reason of section 24;

(c) a question whether a Minister or Northern Ireland department has failed to comply with any of the Convention rights; or

(d) any question arising under this Act about excepted or reserved matters …

2. A devolution issue shall not be taken to arise in any proceedings merely because of any contention of a party to the proceedings which appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious …

7. A court, other than the Supreme Court or the Court of Appeal in Northern Ireland, may refer any devolution issue which arises in any proceedings before it to the Court of Appeal in Northern Ireland."

[67] The Magistrates' Courts (Devolution Issues) Rules 1999 provide as follows:

"4.(1) Where a magistrates' court decides to refer a devolution issue to the Court of Appeal under paragraph 7 of Schedule 10, the court shall make an order so referring the issue …

6.(1) The proceedings before a magistrates' court in which an order is made under rule 4 or 5 for the reference of a devolution issue shall be adjourned until the Court of Appeal or, as the case may be, the Judicial Committee, has determined the issue referred to it.

(2) Nothing in paragraph (1) shall be taken as preventing a magistrates' court from deciding any preliminary or incidental question which may arise in the proceedings after an order referring the devolution issue is made and before the court has received the determination of the Court of Appeal or, as the case may be, the Judicial Committee."

[68] The relevant Forms 1 and Forms 2 are dated 6 June 2025 and were provided to the Attorney General on 24 June 2025 and to the Advocate General on 25 June 2025. The solicitor for the Attorney General, Mr Ian Wimpress, confirmed on 3 July 2025 that the AG did not wish to participate in these proceedings. The Advocate General has adopted a similar stance, confirmed again by Mr Wimpress.

[69] The language used in paragraph 2 of Schedule 10 mirrors that employed in Article 146(4) of the Magistrates' Court Order 1981. In *Horvath v Northern Ireland Courts and Tribunal Service and Public Prosecution Service* [2024] NICA 29, the court discussed the circumstances where a magistrates' court can refuse to state a case if it concludes that the application is frivolous:

> "[21] Under Article 146(1) of the 1981 Order any party dissatisfied with any decision of the court upon any point of law may apply to the court to state a case for the opinion of the Court of Appeal. The magistrates' court may refuse to state a case only if it is of the opinion that the application is "frivolous" (Article 146(4)). As recently stated by this court, this "is obviously a high threshold" (see *Public Prosecution Service v Lewis* [2024] NICA 17 at para [12]). If a magistrates' court refuses or fails to state a case the applicant can apply to a judge of the Court of Appeal for an order directing the magistrates' court to do so (Article 146(7)).
>
> [22] In *McClenaghan (Chief Inspector) v Maxwell* [2000] NIJB 109 the court considered what constituted a "frivolous" application. Carswell LCJ referred to the passage in the judgment of Lord Bingham LCJ in *R v Mildenhall Magistrates' Court, ex parte Forrest Heath District Council* (1997) 161 JP 401 at 408, where Lord Bingham stated that "what the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic." Carswell LCJ opined that "the test is that of hopelessness or academic nature as set out by Lord Bingham LCJ."
>
> [23] More recently, in *Public Prosecution Service v Pearson* [2019] NICA 30, Deeny LJ adopted Carswell LCJ's elucidation of the test in *McClenaghan v Maxwell*, "that the Magistrates' Court should not be rejecting an application for case stated unless it is hopeless or of an academic nature" (para [15]) [emphasis added]. (See also Stephens LJ's discussion, confirming the above interpretation, in the context of a refusal to state a case pursuant to Article

61(4) of the County Courts (NI) Order 1980 in *Murphy v Murphy* [2018] NICA 15 at para [10])."

[70] Then later in conclusion:

> "[48] Accordingly, when dealing with whether the judge was incorrect to refuse the case stated on the basis that it was "frivolous", we ask ourselves whether the judge was wrong to conclude that the application was hopeless or academic."

[71] The devolution issues I am asked to refer were the subject of discussion at the submission stage of these proceedings and generated for my assistance a defence note dated 10 April 2026 which particularised the issues:

> "The Court will recall that in the rejoinder two further possible devolution issues were set out for consideration. These are set out again below:
>
> (a) If the offence of 'influencing a protected person' under section 5 (2) (a) of the Abortion Services (Safe Zones Access) Act (Northern Ireland) 2023 is to be interpreted as not requiring the presence of a protected person to be proved, was it within the legislative competence of the Assembly to enact it?
>
> (b) If the offence of 'influencing a protected person' under section 5 (2) (a) of the Abortion Services (Safe Zones Access) Act (Northern Ireland) 2023 is to be interpreted as penalising acts of religious worship which do not refer to abortion and do not display abortion-related imagery, was it within the legislative competence of the Assembly to enact it?
>
> For ease of reference the four original devolution issues are set out below:
>
> (i) Whether the automatic creation of a "safe access zone" when a request is made for one and its automatic extent contained within The Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 breaches the defendant's rights under Articles 9, 10 and 11 of the ECHR whether considered singly or together with Article 14 ECHR.

(ii) Whether the textual breadth of the concept of "influencing" in section 5(2)(a) of the 2023 Act linked to "in connection with the protected person attending protected premises for a purpose mentioned in section 3" (which is apt on its face to penalise an unprotected person influencing a gardener working at Coleraine Hospital about the mode in which he or she cuts the grass (see section 3 (c) of the 2023 Act)) but which is used only against persons opposed to abortion breaches the defendant's rights under Articles 9, 10 and 11 of the ECHR whether considered singly or together with Article 14 ECHR.

(iii) Whether the textual breadth of the concept of "influencing" in section 5(2)(a) of the 2023 Act which is apt on its face to penalise influencing a person for or against an abortion but which is only used against persons opposed to abortion breaches the defendant's rights under Articles 9, 10 and 11 of the ECHR whether considered singly or together with Article 14 ECHR.

(iv) Whether the concept of "influencing … whether directly or indirectly" in section 5(2)(a) of the 2023 Act insofar as it penalises prayer, being an invocation of Almighty God, breaches the defendant's rights under Articles 9, 10 and 11 of the ECHR whether considered singly or together with Article 14 ECHR."

[72] The prosecution remains of the view that the defence have to date failed to fully set out the case for referral or developed it in any detail.

[73] The original four issues are in my opinion inviting re-litigation of matters already determined by the Supreme Court. Section 5(2)(a) is not outside the competence of the Assembly, nor is it incompatible with the Convention rights of Mr Johnston. Paragraph 155 of that judgment specifically deals with the creation of a SAZ finding that the relevant provisions in now sections 1, 2 and 4 of the Act are compatible with the Convention.

[74] The two supplementary issues are matters of legislative interpretation subject to the findings of this court in the present case. If I have erred in my interpretation

the challenge is to that decision and not to the legislative competence of the body which enacted the law already found to be Convention compatible.

[75] I agree with the prosecution assessment of this element of the case, and I have not been persuaded on the basis of material currently before the court that any of the purported devolution issues have a hope of success and I refuse to make the referral sought to the Court of Appeal. Accordingly, there is no requirement to adjourn these matters further.

[76] Mr Johnston is guilty of both complaints.