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Sarah Everard Vigil Organisers Vindicated by Landmark High Court Ruling against the Metropolitan Police Force

On Friday at 10.30am judgment was handed down in the judicial review brought by Reclaim These Streets against the Metropolitan Police's handling of a proposed vigil in memory of Sarah Everard and in opposition to violence against women.

In a landmark victory with far-reaching implications for the right to protest, the High Court found that the Metropolitan Police repeatedly violated the four organisers' human rights to freedom speech and freedom to assemble by preventing them from organising the vigil, which would have taken place a year ago on Sunday.

Reclaim These Streets sought to organise a vigil in the wake of Sarah Everard's disappearance, to express their collective grief and to campaign for changes in attitudes and responses to violence against women. Their plans were thwarted by the decisions and actions of the Metropolitan Police, who threatened the women with fines and prosecution if the event went ahead.

Lord Justice Warby and Mr Justice Holgate have today held that those decisions and actions were unlawful, because the police failed to give proper consideration to rights to freedom of expression and assembly, protected under Articles 10 and 11 of the European Convention on Human Rights.

In summary, the court held:

- The police took six decisions between 11 and 12 March 2021, each of which *"amounted to an interference with the claimants' Convention rights, because each decision had a chilling effect"* on the claimants' ability to organise the vigil [Para 76].
- A person involved in an assembly that contravenes the Coronavirus Regulations would have a "reasonable excuse" for doing so where it would be a breach of Article 11 to prohibit or interfere with such involvement. This must be decided on a case by case basis.
- This means that *"no enforcement decision can lawfully be made without a proportionality assessment"* to ensure human rights are respected [Para 78].

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Various factors must be weighed up, including the importance of the rights at stake, the impact on the rights of others, and the risk to public health.

- The police's starting point should have been that freedom of expression and assembly might provide a reasonable excuse for organising or taking part in a gathering such as the vigil. The police were then required to reach a rational and informed assessment of whether or not the organisers could claim to have a reasonable excuse.
- The police did not conduct this assessment. The court analysed the legitimacy of each of the six decisions taken by the police, and concluded at every point that the police proceeded on the basis of an incorrect interpretation of the law, as they did not appreciate the requirement to properly consider the protected Convention rights of the claimants.
- Lord Justice Warby described the MPS decisions variously as “legally mistaken” [Paras 4 and 96], “simplistic” [89], “misinformed” [87], and said that statements by the MPS that the vigil would be unlawful was “incorrect and misleading” [84]. He also concluded that a public statement made by the Commissioner herself on the day of the vigil appeared to reflect a “mistaken legal analysis” [92].
- The policy and guidance produced by MPS and the College of Policing (a body set up by the Home Office to advise police forces) which underpinned the six decisions in this case also failed properly to interpret the Coronavirus Regulations, as neither gave due consideration to Article 10 and 11 rights.

Lord Justice Warby summarised:

I have reviewed all the evidence about the six decisions under scrutiny, bearing in mind these principles and the need to avoid an unduly strict interpretation of things that may have been said or written in some haste, under pressure. My conclusion is however that none of the decisions complained of was in accordance with the Regulations, properly interpreted in the way that I have identified. I would uphold both the claimants' grounds of challenge in relation to each of those decisions.

...

the decisions of the MPS were legally flawed in that they did not give proper effect to the “reasonable excuse” provision in the Regulations and the MPS failed to carry



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out a fact-specific proportionality assessment in accordance with [the Supreme Court judgment in] Ziegler. Those decisions had a chilling effect on the exercise by the claimants of their rights under articles 10 and 11, which have been violated. The claimants have been deprived of a decision by the MPS in accordance with the law.

The Claimants from Reclaim These Streets, said:

Last March, women's voices were silenced. Today's judgment conclusively shows that the police were wrong to silence us.

We came together, one year and one day ago, to organise a vigil on Clapham Common because Sarah Everard went missing from our neighbourhood. We felt sad and afraid. We were angry that women still weren't safe and we were tired of the burden to stay safe always weighing on our shoulders. We organised it because as women we needed a space to stand together in solidarity, grief and defiance. And above all we organised it because it's wrong that women face violence and harassment every single day.

We feel vindicated by today's judgment. This case exposes the Metropolitan Police's total disregard for women's human rights to assembly and expression.

We hope that as Parliament considers giving the police greater powers to curb protests, in the Police, Courts, Sentencing and Crime Bill, that this ruling reminds everyone the importance of upholding our human rights.

Theodora Middleton of Bindmans LLP, solicitors for Reclaim These Streets, said:

This is a resounding vindication of our clients' rights, and of the rights of all those whose rights to protest trampled during the pandemic. From the outset, and at every stage, the police's interpretation of the law and the actions they took as a result were legally wrong.

The police made not just one, but six different unlawful decisions, which prevented our clients and others from gathering to express their sadness and anger about endemic violence against women. They deprived many hundreds of women and allies of the opportunity to gather in solidarity and mutual support, and build momentum for change. A year on, it is heartening that the courts have delivered this important condemnation of the police's actions, but our clients should never have had to fight this case.

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During the pandemic, the police were given unprecedented powers to restrict civil liberties, but this judgment confirms that they were not relieved of the duty to respect and uphold human rights. This judgment is a forceful reminder to police forces across the country that they ignore the human rights of protestors at their peril. The exercise of police powers must not undermine the fundamental rights and freedoms of a democratic society.

ENDS

Notes for editors

1. Reclaim These Streets claimants will be present at the Royal Courts of Justice at 10:30 am and will be making a statement. The statement will be available on the Reclaim These Streets twitter here: twitter.com/reclaimTS
2. For further media inquiries - please email reclaimthesestreets@gmail.com and one of the claimants will respond as soon as possible.
3. Theodora Middleton and John Halford Bindmans LLP act for the Claimants. Tom Hickman QC of Blackstone Chambers, and Adam Wagner and Pippa Woodrow of Doughty Street Chambers, are instructed as Counsel.