**R. (Natural England) v Day**

Court of Appeal (Criminal Division)

18 December 2014

**[2014] EWCA Crim 2683**

**[2015] 1 Cr. App. R. (S.) 53**

Lord Thomas ( Lord Chief Justice ), Openshaw and Lang JJ :

18 December 2014

Causation; Environmental offences; Financial circumstances orders; Fines; Proportionality; Sites of Special Scientific Interest; Trees; Wealth

H1 *Fines—individual of great wealth—guidance as to approach and level of fine—financial circumstances order—time to pay—Wildlife and Countryside Act 1981—site of special scientific interest*

H2 The court considered the level of a fine imposed upon a man of great wealth for an offence under the [Wildlife and Countryside Act 1981](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I60318FA0E42311DAA7CF8F68F6EE57AB) , giving guidance as to the approach to be taken when courts impose fines upon individuals with extensive means.

H3 The appellant, D, had carried out unauthorised works on a site of special scientific interest and subsequently pleaded guilty to offences under the[Wildlife and Countryside Act 1981](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I60318FA0E42311DAA7CF8F68F6EE57AB) . He appealed against a fine of £450,000 and costs in the sum of £457,317.

H4 D was a wealthy business man who owned a woodland, part of which had been designated as a site of special scientific interest. In 2010, D intended to operate a commercial pheasant shoot. Under the Estate Manager’s direction, a track was constructed wide enough to take vehicles, along with the construction of bunds and banks to support the track. As a result, large areas were stripped of trees and flora, exposing large expanses of soil and rock. Natural England, the body responsible for authorising such works, had not granted authorisation, only becoming aware of the works after having received complaints from local residents. After the works ceased, D tried to use his wealth to intimidate the local community and avoid criminal proceedings being brought against him. D was prosecuted and, despite Natural England indicating their willingness to have the matter tried summarily, D elected to be tried before the Crown Court.

H5 A *Newton*hearing was necessary to determine D’s culpability as the prosecution did not accept his case that his measure of responsibility was so low that the appropriate penalty might be an absolute or conditional discharge. However, the prosecution did concede that D had not deliberately caused the operations to take place. The judge found that D had been grossly negligent and imposed a fine of £450,000 together with costs in the sum of £457,317.

H6 On appeal against sentence, D submitted, inter alia, that: (a) the fine should have reflected the harm caused and his culpability: it did not and was therefore disproportionate; and (b) the judge: (i) should have taken into account the fact that Natural England was prepared to have the matter tried summarily where the ***\*365*** maximum fine would have been £20,000 on each count; (ii) had wrongly taken into account D’s wealth in a number of different respects; and (iii) should have considered the effect on D of the opprobrium which he had suffered as a result of his conviction.

H7 **Held:** dismissing the appeal, that (1) once D had elected to take the proceedings to the Crown Court, the judge was plainly bound to approach the case on the evidence as it appeared before him and could not be influenced in any way by an earlier decision of the respondent ([40]).

H8 (2) Regarding the judge taking account of D’s wealth, he was plainly entitled to do so and, in so doing, was following the principles set out in [*R. v Sellafield; R. v Network Rail [2014] EWCA Crim 49*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I1BF475A0803311E38B539562F9E02B55) ([41]).

H9 (3) It was the judge’s duty to impose a fine that would not only punish D for what he had done for commercial gain but which would also deter others and protect the public. The judge had rightly identified that the protection of the environment, and particularly protection of SSSIs, was of great importance. SSSIs represented the common heritage of mankind; they were not subject to the commercial interests of a person who held the land for the time being. It was also important to take account of the obvious fact that the respondent had significant difficulties in monitoring SSSIs; deterrence was therefore of considerable importance and the fine had to be of such a size that would achieve each of those objectives ([43]).

H10 (4) As to the effect of the opprobrium suffered as a result of D’s conviction, aside from the evidence that D’s family had had to move from the area, there was no evidence as to the actual effect on D’s business, livelihood or reputation. Although the opprobrium in which D would be held after his conviction would be taken into account, it was not a factor to which very great weight could be attached ([45]).

H11 (5) Applying the approach taken in [*Sellafield*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I1BF475A0803311E38B539562F9E02B55) to individuals possessing the scale of wealth of D, a fine significantly greater than that imposed by the judge would have been amply justified for D’s grossly negligent conduct in pursuit of commercial gain, particularly when so seriously aggravated by his conduct in obstructing justice. A fine in seven figures should not therefore be regarded as inappropriate in cases where such a fine was necessary: (a) to bring home to a man of enormous wealth the seriousness of his criminality in cases such as this where there was gross negligence in pursuit of commercial gain; (b) to protect the public interest in SSSIs; and (c) to deter others. In the case of deliberate conduct in similar circumstances, a fine in relation to a man of similar wealth should be significantly greater as that would be necessary to reflect the greater culpability. The fine of £450,000 imposed on D could not therefore be viewed as disproportionate; it was entirely proportionate to the culpability and the harm caused ([46] and [48]).

**Financial circumstances orders**

H12 (6) The [Criminal Justice Act 2003 s.162](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IDF780020E44911DA8D70A0E70A78ED65) enabled the court to make a financial circumstances order requiring a person who had been convicted of an offence to make a statement of his financial circumstances. In the instant case, the court had proceeded on the assumption that D had assets of £300m, a contention that he had not challenged. His wealth could, in fact, have been substantially greater. In the case of wealthy individuals, courts should consider making an order requiring a ***\*366*** detailed statement of a defendant’s assets and income. It would ordinarily be desirable to require the information to cover a five-year period so that the court would be able to take an informed view of the actuality of the offender’s assets and income ([50]).

**Time to pay**

H13 (7) In [*R. v B&Q Plc [2005] EWCA Crim 2297*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I32B52CD0E42811DA8FC2A0F0355337E9) the court stated that, in the case of a large company, a fine should, as a matter of course, be paid either immediately or in a period to be measured in single figure days unless cogent evidence was provided that more time was required; such a requirement would bring home to the offender the seriousness of the offending and the impact of the penalty. The same principles applied to individuals of enormous wealth ([51]).

**Compliance with orders pending appeal**

H14 (8) The fact an appeal was pending did not operate to suspend the operation of any sentence or order of the Crown Court whether it be imprisonment, payment of a fine or a confiscation order. Once made, the order was enforceable in accordance with its terms in the absence of the exercise by a court of any power to the contrary. It was for that reason that an applicant sentenced to imprisonment and who sought leave to appeal went immediately into custody and had to apply for bail under the statutory powers given to the Court of Appeal and the Crown Court. Similarly, an appellant given community service had to carry this out. There was no statutory or other power given to any court to suspend payment of a fine or costs. Once ordered by a court to pay a fine or costs, that order had to be obeyed and the fine paid ([55] and [56]).

H15**Cases cited:**

* [*Environment Agency (formerly National Rivers Authority) v Empress Car Co (Abertillery) Ltd [1999] 2 A.C. 22; [1998] 2 W.L.R. 350 HL*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IA1BAEAD0E42711DA8FC2A0F0355337E9)
* [*R. v B&Q Plc [2005] EWCA Crim 2297*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I32B52CD0E42811DA8FC2A0F0355337E9)
* [*R. v Hughes [2013] UKSC 56; [2013] 1 W.L.R. 2461*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IE79E1990F9D311E284E68F0EB1A72164)
* [*R. v May (Confiscation Order: Time to Pay) [2005] EWCA Crim 367*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I57204B90E42811DA8FC2A0F0355337E9)
* [*R. v Sellafield Ltd; R. v Network Rail [2014] EWCA Crim 49*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I1BF475A0803311E38B539562F9E02B55)
* [*West Midlands Probation Board v Sutton Coldfield Magistrates’ Court [2008] EWHC 15 (Admin); [2008] 1 W.L.R. 918*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I91B575E0C32F11DCA4569A59EF8150D7)

H16 **References:** Current Sentencing Practice , J1-2.

H17**Representation**

* Richard Matthews QC and Jonas Milner for Day.
* Rex Tedd QC and Bernard Thorogood for the respondent.

**Judgment**

Lord Thomas of Cwmgiedd CJ:

1 In October 2010 the appellant, Philip Day, a man of enormous wealth and who employs 10,000 people through the companies controlled by him, acquired with his wife the Hayton Estate near Brampton, Carlisle, Cumbria. The estate comprises about 500 acres, mainly of woodland. Part of the estate is bounded by the River Gelt, which runs along the easterly borders of the estate in a north westerly direction ***\*367*** and eventually flows into the River Eden. The Gelt at this point has carved a channel through the red sandstone to form a meandering gorge.

2 The environmental and ecological importance of an area in the gorge within the Hayton Estate was recognised in 1969 when it was designated as a Site of Special Scientific Interest (SSSI); that designation was intended to protect it.

3 In November 2010 operations were carried out within the area of the SSSI without the authorisation of Natural England, the body which, under the[Wildlife and Countryside Act 1981](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I60318FA0E42311DAA7CF8F68F6EE57AB) (the 1981 Act), has authority to allow such operations. The operations resulted in the felling of 43 trees, the construction of a track wide enough to take vehicles and the construction of bunds/banks to support the track. Large areas were stripped of trees and flora exposing large areas of soil and rock. The local residents, despite actions intended by the appellant to obstruct them, brought the matters to the attention of Natural England.

4 As a result, the appellant was charged with offences under [ss.28E(1)](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5E889AC0E44811DA8D70A0E70A78ED65) and [28P(1) of the 1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I13188DA0E44A11DA8D70A0E70A78ED65) . It provides as follows:

“28E(1) The owner or occupier of any land including in a Site of Special Scientific Interest shall not … carry out or cause or permit to be carried out, on that land any operation … unless

(a) One of them has … given Natural England notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out. ...

“S.28P

(2) A person who, without reasonable excuse contravenes [s.28E(1)](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5E889AC0E44811DA8D70A0E70A78ED65) is guilty of an offence … .

(4) For the purpose of sub-sections (1), (2) and (3), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if …

(b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to Natural England as soon as practicable after the commencement of the operation.”

5 The appellant was summoned before the magistrates' court, but pleaded not guilty. He elected trial. He was committed for trial at the Crown Court at Carlisle on an indictment containing three counts relating to the operations we have described, each charging an offence under [ss.28E](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5E889AC0E44811DA8D70A0E70A78ED65) and [28P of the 1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I13188DA0E44A11DA8D70A0E70A78ED65) .

6 The appellant sought a preliminary hearing. He then asked the judge to rule before any evidence was heard on a question of law. That hearing took place on 18 and 19 April 2013 before HH Judge Peter Hughes QC. The judge made a ruling which was challenged on this appeal.

7 After that ruling the appellant pleaded guilty to Counts 1 and 2. He submitted a document entitled, “Basis of plea and points for mitigation”. Despite the prosecution pointing out in writing before the hearing that it did not accept that basis of plea, the appellant did not apply to vacate the plea.

8 The judge then held a *Newton*hearing, making his findings on 31 July 2013. In the result the judge fined the appellant £450,000 and costs in the sum of £457,317.74. A default sentence was fixed at four years. Count 3 was ordered to lie on the file on the usual terms. No part of the fine had been paid at the time of the hearing, but the fine and the costs were paid on 5 December 2014. ***\*368***

9 The appellant appeals by leave of the single judge against conviction and sentence. He was represented by Richard Matthews QC who did not appear below. He conducted the appeal with his customary skill and learning.

**The appeal against conviction**

*(a) The ruling made by the judge*

10 As we have set out at [6] above the appellant through his then legal team raised a number of legal issues. On 18 and 19 April 2013 two of those points were heard, namely: (1) whether the offences under [ss.28E](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5E889AC0E44811DA8D70A0E70A78ED65) and [28P of the 1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I13188DA0E44A11DA8D70A0E70A78ED65) with which the appellant was charged were offences of strict liability; and (2) whether the matters relied on by the prosecution could in law amount to the appellant *causing*the prohibited operations that resulted in the damage to the SSSI which we have described.

11 It is important to point out at the outset that it is not disputed on this appeal that the offences were ones of strict liability. However we could not understand why the point in relation to causation had been argued before the evidence was heard. Richard Matthews QC could not help us with an explanation, save to say that the appellant had acted on the advice of his then legal advisers. It was submitted by Tedd QC on behalf of the prosecution that the appellant's purpose had been to take every step, consistent with the conduct that he had engaged in with the local residents to which we refer at [32.ix)]–[32.xii)] below, of using his wealth to try and obstruct his prosecution.

12 The case of the prosecution on causation at that stage was relatively simple. As set out at [46] of the ruling of the judge, it was:

“In this case the Prosecution has identified the act on which it relies as causing the prohibited operations in the following terms:—

(a) that he instructed or authorised his land agents to draw up and implement a scheme that involved substantial physical works on his land;

(b) that the works involved the hire and use of heavy equipment, the purchase of roadstone and pheasant pens, and stocking with game birds; and

(c) that he instructed or authorised entry on to the land to carry out the works.”

13 It was argued on behalf of the appellant that the approach to causation set out in [*Environment Agency v Empress Car Co (Abertillery) Ltd [1992] A.C. 22*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IC6FA2270E42711DA8FC2A0F0355337E9) as applicable to the [Water Resources Act 1991](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5FEBD410E42311DAA7CF8F68F6EE57AB) should not apply to an offence under [ss.28E](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5E889AC0E44811DA8D70A0E70A78ED65) and [28P of the 1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I13188DA0E44A11DA8D70A0E70A78ED65) . It was contended that what the prosecution had to prove under the [1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I60318FA0E42311DAA7CF8F68F6EE57AB) was that the appellant had done something that possessed a certain quality which might lead to or result in causing the prohibited operations; that what the prosecution was alleging was insufficient to meet that requirement.

14 After holding the offence was one of strict liability, which as we have stated is not challenged on this appeal, the judge held:

“44. The Prosecution must still identify what it is alleged the Defendant did that caused to be carried out the particular operation specified in the counts ***\*369*** on the indictment, and prove that it did cause that operation to be carried out. This was considered by Lord Hoffmann in his five propositions in [*Empress Car*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IC6FA2270E42711DA8FC2A0F0355337E9) .

45. Whether the act was capable of causing the operation, it appears to me is a question of law, but whether it did so cause it, is a question of fact for the jury on the whole of the evidence.”

15 After setting out the prosecution case at [46] which we have set out at [12] above, the judge continued:

“47. It contends that the Defendant's intentions and the terms of his instructions are matters that are particularly within his own knowledge, and that – although it may allege that this was the true position – it does not have to prove that he deliberately caused the operations to take place within the SSSI or that he knew of the existence of the SSSI; only that he caused the prohibited operations.

48. It will be for the jury to decide whether the act alleged is proved and whether it caused the operation in question to be carried on. If the Defendant puts forward a ‘reasonable excuse’ it will be for the jury to decide whether there was an excuse, and whether, if so, it was a reasonable one.”

16 It was the submission of Mr Matthews QC to us that in the ruling made by the judge, the judge was applying the principles set out in [*Empress Car*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IC6FA2270E42711DA8FC2A0F0355337E9)and should have applied the much narrower test which was subsequently set out by the Supreme Court in [*R. v Hughes [2013] UKSC 56*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IE79E1990F9D311E284E68F0EB1A72164) where at [32] the Supreme Court said, in respect of offences of causing death by driving in circumstances defined in [s.3ZB of the Road Traffic Act 1988](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I610AF6307D2211DB9833E1CC4921FF0C) , that:

“It is not necessary for the Crown to prove careless or inconsiderate driving, but that there must be something open to a proper criticism of the driving of the defendant, beyond the mere presence of the vehicle on the road which contributed in some more than minimal way to the death.”

It was submitted that for an offence under [ss.28E](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5E889AC0E44811DA8D70A0E70A78ED65) and [28P of the 1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I13188DA0E44A11DA8D70A0E70A78ED65) it was necessary for the prosecution to prove that something the appellant had done was something that could properly be criticised.

17 At the point of time at which the ruling was sought the prosecution had called no evidence. As appears from the defence statement served on the appellant's behalf, it had been the appellant's case that the earthworks were carried out by a Mr Howard and the tree cutting works by a Mr Fearn on the direction of Marc Gardner; it was said that Marc Gardner was not an employee of the appellant but a self-employed gamekeeper who, “had agreed to carry out routine maintenance on the estate in return for the right to conduct occasional shooting parties on the estate but not otherwise for payment”. Both Mr Howard and Mr Fearn had been called in by Mr Gardner. It was also the defence case that the appellant had not instructed Mr Gardner to carry out the works. Mr Gardner had decided of his own initiative that the work should be carried out in response to what he honestly and reasonably considered to be:

“An emergency situation, namely the partial collapse and imminent further collapse of the banks of the river, potentially endangering those using the public footpath on the opposite side of the river. At the request of Mr Gardner ***\*370*** on 15 November Mr Howard widened part of an existing track and created a new linking section; Mr Fearn had on 16 November at the request of Mr Gardner removed dead, dying or dangerous trees, including the limbs of trees that had been broken in the bank collapse.”

18 It can thus be seen that, as the matter appeared at this very early stage of the proceedings at the Crown Court, it was the defence case that the appellant had played no part in giving any instructions for the work, that he ran several successful businesses and spent most of his time travelling and away from his home. He had not been consulted in relation to the work done on the estate and he denied he knew that the works would or might be done or there was any likelihood that the works would or might be done. He had therefore not caused the prohibited operations to be carried out

19 We were told by Mr Tedd QC on behalf of the prosecution that it was its case that Mr Gardner had a business card bearing his name and the coat of arms of the estate and describing him as the estate manager of the appellant. £5,000 had been paid for the hire of the machinery which was used to make the tracks and bunds/banks; that sum had not been paid by Mr Gardner. It was to be the prosecution's case, as set out in [46] of the judge's judgment, that the appellant's instructions to his agent, Mr Gardner, had caused the prohibited operations to be carried out. There would be inferences that the prosecution would seek to draw as to the detail of the instructions given by the appellant when the evidence was called; all that the prosecution was doing at this stage was setting out its general case. It was self evident, it seems to us, that in the course of the evidence that was to be called by the prosecution there might be numerous points of criticism, on the basis of that case, of the conduct of the appellant and that the case might be developed to show the appellant's actions had the “quality” which it was argued by the appellant they had to have. On the other hand, the evidence might not have developed in this way.

20 However, at the time the ruling was made, no evidence had been called. There had been no development of the case and the nature and quality of the instructions had not been gone into. As the judge correctly held, the matters as broadly outlined in the prosecution's case were capable of causing the prohibited operations, but whether they had or not was for the jury to determine when the evidence had been heard.

21 No doubt, if a submission had been made at the conclusion of the evidence or when the directions to the jury were to be discussed, there could properly have been an argument either as to the sufficiency of the evidence on causation or as to the proper directions to the jury which would have raised in a more precise form what was required for causation. However at the time the point was taken that could not be done. The judge was entitled to rule as he did.

22 We cannot therefore see how any criticism can possibly attach to the ruling. As we set out below the appellant pleaded guilty, even though the prosecution pointed out what this entailed. It therefore became unnecessary for the judge to determine whether there was evidence that the actions of the appellant could in law amount to causing the operation on the SSSI or the proper directions to be given to the jury.

23 We cannot therefore, in this appeal, determine whether the contention made by Mr Matthews QC that something more than the five matters set out in the judgment ***\*371*** in [*Empress Car*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IC6FA2270E42711DA8FC2A0F0355337E9) is required and that what was decided in [*Hughes*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IE79E1990F9D311E284E68F0EB1A72164) should by parity of reasoning be applied to offences under [s.28E](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5E889AC0E44811DA8D70A0E70A78ED65)and [28P of the 1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I13188DA0E44A11DA8D70A0E70A78ED65) . We will express no view, save to say that we see strong arguments for following the approach in [*Empress Car*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IC6FA2270E42711DA8FC2A0F0355337E9) in relation to the [1981 Act](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I60318FA0E42311DAA7CF8F68F6EE57AB) , if the issue ever arises on the facts of any properly developed case.

*(b) The basis of plea*

24 After the ruling had been handed down, the appellant changed his plea to a plea of guilty to Counts 1 and 2. As we have mentioned, he submitted a document dated 24 June 2013 entitled “basis of plea and points for mitigation”. In it he stated that he entered a plea on the basis that to prove the appellant had caused the operations at the SSSI, “it was not necessary to prove that he had authorised them, expressly or impliedly or that he had any intention or particular state of mind”. The document went on to say that the appellant had appointed Edwin Thompson, described as “a highly reputable firm of agents” to manage the day-to-day running of the estate and to advise him. He did not know of the intention of Marc Gardner, who was descried as a self-employed gamekeeper on the estate, to carry out or cause Mr Fearn to chop down the trees or Mr Howard to construct the track. The operations were carried out by them in circumstances which ran directly contrary to the scheme which Edwin Thompson as the appellant's agents had planned. The basis of plea then set out the scheme which Edwin Thompson had planned and the steps that had been taken properly to implement that scheme. It then gave an account of the circumstances in which the track was constructed and the trees felled.

25 That basis of plea was not accepted by the prosecution. In a document entitled, “Prosecution response to the defendant's basis of plea” served shortly before the hearing before the judge on Friday, 28 June 2013 the prosecution made clear that it construed the appellant's basis of plea as an acceptance in respect of Counts 1 and 2 in the indictment that he had caused the prohibited operations. It made clear that it had identified the elements of the offence which included a causal connection between the appellant's acts and the prohibited operations that were carried out. It then referred to [46] of the judgment in which the judge had set out the core elements of the prosecution's primary case. The document then continued:

“It appears implicit in the Defendant's proposed pleas that:—

(a) he accepts acting as set out at paragraph 2(ii)(a)-(c) above (although this appears not to be explicitly stated in the Basis of Plea); and

(b) he accepts that there was a causal connection between those acts and the prohibited operations [OLDs] done on his land.”

26 The prosecution document went on to state that it was implicit in the proposed appellant's plea that he did not seek to discharge the burden of proving the statutory defence, that therefore he had no reasonable excuse for his acts and that the operations concerned were not an emergency operation.

27 In our judgement there can be no doubt that the prosecution was putting the appellant fairly on notice that by his plea he was accepting that he had caused the operations to be carried out. As the judge had quite clearly only dealt with the elements of the prosecution case as had been broadly outlined, it would have been open to the appellant to ask the judge if he could withdraw his plea on the basis that there had been a misunderstanding. The matter could then have proceeded to ***\*372*** trial and the arguments in relation to causation and the application of the test in [*Empress Car*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IC6FA2270E42711DA8FC2A0F0355337E9) taken place at the proper time.

28 He did not do this but accepted that he had caused the operations. If he had chosen to vacate his plea then, after the evidence, it might theoretically have been possible for him at the end of the evidence to have raised the points that Mr Matthews QC has so elegantly sought to raise before us. As we will set out, the evidence which emerged at the *Newton*hearing precluded any possibility of such an argument being made. Under whatever test was applied, the appellant had on the evidence subsequently heard before the judge plainly caused the operations.

29 As the appellant maintained his plea of guilty in the circumstances we have described, he had accepted in clear and unequivocal terms that he had caused the operations that resulted the damage. The appeal against conviction therefore fails. We turn to consider the appeal against sentence.

**The appeal against sentence**

30 The appeal against sentence was advanced on the basis of five core contentions:

* i) the judge was wrong to take into account the conduct of the appellant and those instructed by him after the operations to the SSSI had ceased. This issue primarily relates to the appellant's conduct towards those local residents who sought to bring him to justice;
* ii) the fine should have reflected the harm caused and the culpability of the appellant. It did not and was disproportionate;
* iii) the judge should have taken into account the fact that Natural England was prepared to have the matter tried summarily where the maximum fine would have been £20,000 on each count;
* iv) the judge had wrongly taken into account the appellant's wealth in a number of different respects; and
* v) the judge should have considered the effect on the appellant of the opprobrium which the appellant had suffered as a result of his conviction.

31 A Newton hearing was necessary to determine the appellant's culpability, as the prosecution did not accept his case that his measure of responsibility was so low that the appropriate penalty might be an absolute or conditional discharge. It took place over four days and included a visit by the judge to the SSSI. Although Marc Gardner and Mr Holliday of Edwin Thompson were called to give evidence in support of the appellant's case, the appellant did not give evidence.

*(a) The Newton hearing*

32 On 31 July 2013 the judge set out his findings:

* i) the appellant had decided to operate a commercial pheasant shoot on the estate. He had told the Hayton Parish Council on 15 September 2010 that economic pressures dictated that the woods must become commercially viable; shooting on a number of days in the year could achieve this. The judge was sure the appellant was alive to the concerns of the potential for serious ecological damage;
* ii) Marc Gardner's description of himself as an estate manager accorded with the appellant's own instructions. There was a close relationship between***\*373*** the appellant and Marc Gardner based on mutual trust. He acted as the estate manager as the appellant had intended. Marc Gardner had been appointed as the estate manager because the appellant wanted to set up a pheasant shooting estate but had neither the experience nor time to do so. Mr Gardner had the knowledge and experience and had been employed for that purpose. Mr Gardner gave wholly unconvincing evidence; he was prepared to tailor his evidence to what he considered would suit his own purposes and those of the appellant;
* iii) Mr Holliday of Edwin Thompson had a role which was primarily to prepare applications for felling licences and for a Woodland Improvement Grant; it was anticipated that the appellant would have obtained over £100,000 from public funds. By mid-October 2010 Mr Holliday had completed that exercise. He was naïve and unprofessional in relation to what occurred, particularly in his work directed at obtaining the grant;
* iv) the appellant and Mr Gardner were working to a timetable to enable them to take advantage of the 2010/2011 shooting season on a commercial basis. Mr Holliday did not understand that timetable; the applications for felling licences and the Woodland Improvement Grant could not be completed within the timetable;
* v) on 13 October 2011 at a meeting between Mr O'Neill (the Woodland Officer of the Forestry Commission) Mr Holliday, the appellant and Mr Gardner, the appellant indicated his intention to begin operating a shoot on the estate by sometime in November 2010. The existence of the SSSI was discussed; Mr O'Neill was given an assurance by Mr Holliday that felling of the trees would not take place in the SSSI;
* vi) on 13 October 2010 Natural England was notified by a local resident of the need to investigate what works were taking place;
* vii) it was clear from the evidence of the local residents that by the end of October/beginning of November extensive works were carried out within the SSSI involving the hiring of mechanical equipment, the felling of trees and the building of the wide tracks with banks/bunds;
* viii) the judge totally rejected Marc Gardner's evidence that: (1) the work that was carried out after 15 November 2010; and (2) it was done as a result of the collapse of a bank. He found that the building of the track and the felling of the trees were part of an ongoing operation which had started some days before 15 November 2010. It was clear that a track was deliberately cut along the line of an old path; that the trees were felled and pruned as part of a thinning operation and not to clear away fallen or diseased trees;
* ix) these operations resulted in significant complaints by local residents to Natural England. On 17 November 2010 Natural England informed the appellant by email of Natural England's concern and requested a meeting. That evening the appellant responded through Mr Dwyer of Cartmell Shepherd (Carlisle solicitors retained by the appellant) and through Mr Holliday, at a meeting of the Parish Council. Mr Dwyer read a statement on behalf of the appellant in which he said that the appellant would prosecute in the High Court in London all trespassers, would sue trespassers in damages. He would take legal action against any individual for the recovery of photographs taken on the appellant's property and for an injunction preventing individuals from entering the appellant's property; ***\*374***
* x) on 22 November 2010 a meeting took place between the appellant, Mr Holliday, representatives of Natural England and Mr O'Neill. The judge found, as Mr O'Neill's statement set out, that Mr O'Neill was horrified when he saw the track which had been built. He concluded that there had been no land slip, that the trees had been deliberately felled and trees uprooted by mechanical means;
* xi) on 24 November 2010 Cartmell Shepherd sent letters on the appellant's behalf to local residents. The letter to Dr Mather-Christensen (who with her husband, a specialist in forest ecology, had a keen interest in Gelt Woods) was in the following terms:

“We act for Mr P E Day, the owner of the Woodlands specified above.

We understand from our client you have repeatedly trespassed on Mr Day's private property and have repeatedly taken photographs and/or video or digital capture of images of Mr Day's private property.

Our client requires that you write to us by close of business on Friday 26 November 2010 with your written apology for trespassing together with your written undertaking to refrain from trespassing on Mr Day's private property or capturing images of it in future. You must enclose with your letter all photographs and/or other images you have taken of Mr Day's private property.

Failure to comply with the above direction may lead to proceedings being issued against you.”

Another resident, Rebecca Mellor, a local artist who had posted comments on YouTube and Facebook called “Save Gelt Woods Now”, was written to in the following terms by Cartmell Shepherd and the letter hand delivered:

“The YouTube and Facebook sites contain defamatory statements about Mr Day as well as statements which are factually incorrect. Our client requires that you do the following by 5 p.m. on Friday 26 November 2010.”

Six demands were set out including the removal of the material from the internet, an unequivocal apology and an undertaking not to photograph or video or otherwise capture images of the appellant's private property. The letter continued:

“You have uploaded an image of Mr Day on the internet. Mr Day owns the intellectual property of that image. You have breached Mr Day's intellectual property rights by uploading the image to the internet. Mr Day charges £100,000 for the use of the image. You took the image from the Cumberland News, but Cumberland News had Mr Day's permission to use the image. You did not have Mr Day's permission to re-use it. When writing to us as directed above, please let us have your cheque for £100,000, made payable to Cartmell Shepherd, in payment for use of Mr Day's image. Mr Day will donate the £100,000 to a Carlisle children's charity.

Failure to comply with the above requirements by close of business on Friday 26 November 2010 may result in proceedings being issued against you in the High Court. ***\*375***

It has come to our attention that you have organised a ‘walking protest’ to take place at Hayton Woods/Gelt Woods on Sunday 28 November 2010. We put you on notice that it is your responsibility to ensure anyone attending the protest keep to the official footpaths. Our client will hold you personally responsible, as organiser and instigator of this ‘walking protest’, for all and any damage disturbance or nuisance caused or occasioned directly or indirectly from this event” ;

* xii) in addition a notice was posted on a remaining tree on 16 November 2010 which read as follows:

*“Facts*

This side of the bank has always been private and has never been held in public hands.

The emergency work that had to be carried out on the bank to prevent the path from collapsing due to high rainfall and water ingress has now been completed.

The removal of fallen non-native tree species will allow recovery of the area to happen quickly, as the flora that was present in the area is quite vigorous. This also allows for native tree regeneration.

No other part of the bank has been affected and Gelt Woods is not under any threat whatsoever” ; and

* xiii) the track was built and the trees were felled under the instructions of Marc Gardner.

33 The judge then went on to make findings, after taking into account his previous good character and his considerable achievements, in respect of the appellant's culpability:

* i) the conveyancing solicitor knew of the SSSI. The natural and reasonable inference was that he would have explained to the appellant the obligations which that imposed on the landowner. That inference should be drawn as the appellant had not given evidence;
* ii) the appellant had not been candid about his detailed knowledge of the SSSI. He had had to concede at the meeting of 13 October 2010 that he had been told and this predated the operations on the SSSI. The judge was sure on the criminal standard of proof that the appellant knew of the existence and the importance of the SSSI;
* iii) it was inconceivable that the notice that was fixed to a tree on 16 November 2010 (as set out at [32.xii)] above) was put there without the appellant's authorisation;
* iv) the message that the appellant delivered through the solicitor at the meeting on 17 November 2010 could not have been blunter. His message to the residents was effectively, “Don't mess with me.” He should have appreciated that the concern of the local residents was genuine. Rather than seeking to explain what had happened and allay their fears, he sought to take away from them photographic evidence in their possession;
* v) he knew Marc Gardner was creating tracks through the estate under his authority. He took no steps to prevent him from doing so within the SSSI;***\*376***
* vi) Mr Gardner was acting independently of Mr Holliday and without reference to him in preparation for the start of the shooting season. He was acting in close consultation with the appellant. The appellant gave Mr Gardner a free hand and exercised little, if any, control over him;
* vii) the prosecution had not invited the judge to conclude the appellant deliberately caused the operations in the SSSI to take place; the prosecution did not have to make that concession and the appellant was fortunate that they did so;
* viii) the appellant's subsequent conduct after the unauthorised operations was deeply unattractive. He sought to minimise his responsibility for what had happened, using his solicitor to threaten the local community and hiding behind Mr Holliday and Mr Gardner;
* ix) there was no scintilla of an apology or any meaningful acceptance of responsibility; and
* x) the appellant bore a very considerable degree of responsibility for what had happened.

*(b) The reasons given by the judge for the sentence imposed*

34 Having set out the facts as determined by the judge from which Richard Matthews QC rightly accepts there can be no challenge. The judge heard the evidence over a number of days and reached a decision which was open to him on that evidence.

35 We turn to set out the judge's reasoning for imposing the sentences he did:

* i) there were no sentencing guidelines. He was guided by the provisions of the [Criminal Justice Act 2003](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5F97C0A0E42311DAA7CF8F68F6EE57AB) , particularly [ss.143](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=ID7268CD0E45211DA8D70A0E70A78ED65) and [164](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IDF725AD0E44911DA8D70A0E70A78ED65) ;
* ii) it was accepted that the area affected in the SSSI was relatively small and the vegetation should regenerate naturally. It was nonetheless a particularly sensitive point in the river Gelt and made more conspicuous by the felling of trees. Although the harsh appearance should mellow over time, the line carved out to make the track would not disappear. The contours of the hillside had been permanently changed. It was not possible to calculate how the natural flora and fauna had been affected, as after the event it was too late to assess the habitats that had been lost. One was a site where the rare Killarney Fern had thrived in the past;
* iii) the fine imposed should reflect the means of the individual or company. In the case of a large company the fine should be substantial, enough to have a real economic impact which, together with the attendant bad publicity resulting from prosecution, would create sufficient pressure on management and shareholders to tighten regulatory compliance and change company policy;
* iv) similar considerations should apply in the case of wealthy individuals. The appellant had chosen not to provide information as to his means but the prosecution had provided evidence to show that he was one of the wealthiest men in the UK with a personal fortune estimated of around £300 million;
* v) account had to be taken of the growing public concern for the preservation of the countryside and the much greater awareness of the harm that could be done to the fragile environment and ecology by ill-considered and uncontrolled activities; ***\*377***
* vi) the appellant had not pleaded guilty at the first opportunity. Although he had pleaded after the ruling, credit for that plea had been dissipated by the appellant's subsequent conduct of the proceedings and his unsuccessful attempts to avoid all but technical responsibility. A reduction of 10 per cent would be made for his guilty plea;
* vii) the appellant's account that he was unaware that the site was one of SSSI was not accepted. The appellant had given Marc Gardner *carte blanche*to get on and prepare the estate for shooting as he did not wish to miss the 2010/11 season. He exercised no effective control or supervision over Marc Gardner's work which was to an agenda which had been set in consultation with the appellant. Since then the appellant had joined with him in pretending in the teeth of the evidence that he was not the appointed estate manager but merely a gamekeeper;
* viii) the appellant did not deliberately set out to flout the terms of the SSSI but had been grossly negligent. What had compounded his offence and seriously aggravated it were the tactics that he had employed after the commission of the offences with the objective of evading his share of the blame and to cast it on others. He had sought to use the power of his wealth to avoid personal responsibility for what had happened;
* ix) the fine had to mark the seriousness of the offence and the importance that the general public attached to the preservation of rare and sensitive SSSIs. It also had to act as a deterrent. The fine had to be sufficient to bring home the serious view the court took of his behaviour; and
* x) if the sentence had to be passed on the basis that the offences were committed in deliberate violation of the protection afforded by the SSSI the fine would have been in the order of £1 million. Although his actions were not deliberate, he was seriously at fault in failing to exercise control and supervision over Marc Gardner. He had been grossly negligent. The fine overall would be £450,000 based on £500,000 less 10 per cent.

*(c) Our conclusion on the submissions made by the appellant*

36 We have set out at [30] the core contentions that were made to us. We deal with each in turn.

37 The first contention was that the judge had been wrong to take into account the conduct of the appellant after the operations had ceased. In the Sentencing Council's Definitive Guideline in respect of Environmental Offences which, though not applicable, are relevant, a non-exhaustive list of factors of increasing or decreasing seriousness is set out at p.11. The aggravating factors include the location of the offence (for example environmentally sensitive sites), ignoring risks identified by employees or others, established evidence of a wider community impact, committing the offence for financial gain and obstruction of justice. Mitigating factors include evidence of steps taken to remedy the problem and remorse.

38 It is clear from the findings made by the judge that what the appellant did after the operations had been carried out (as we have set out in [32.ix)]–[32.xii)], [33.iii)], [33.iv)] and [33.viii)] above) was intended by the appellant to try and obstruct the bringing of the appellant to justice for what had been done. He set out, as the judge found, to use the power of his wealth to intimidate the local community. Attempts ***\*378*** by an individual to prevent criminal proceedings being brought by conduct of this kind must be regarded by the courts as seriously aggravating the offence.

39 As to the second contention we accept that the fine should reflect the harm caused and the culpability of the appellant. In our judgement the judge correctly identified the harm caused and his culpability. We consider the issue of proportionality at [46] below.

40 As to the relevance of the position of Natural England that it had been prepared to have the matter tried summarily, we were told that that was a decision taken by a junior solicitor. Although Natural England could not have resiled from that decision, if the appellant had accepted summary jurisdiction, once he had decided to elect to take the proceedings to the Crown Court, the judge was plainly bound to approach the case on the evidence as it appeared before him and not be influenced in any way by an earlier decision of Natural England.

41 As to the fourth contention, the judge was plainly entitled to take into account the means of the appellant. In [3] of the judgment in [*R. v Sellafield; R. v Network Rail [2014] EWCA Crim 49*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I1BF475A0803311E38B539562F9E02B55) , this court set out the principles applicable to all offenders, including companies. The court examined the factors set out in the [Criminal Justice Act 2003](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5F97C0A0E42311DAA7CF8F68F6EE57AB) , including punishment, the reduction in crime by deterrence and the protection of the public. In fixing a fine, this court made clear a court had not only to take into account those purposes but also had to take into account the criteria set out in [s.164 of the Criminal Justice Act 2003](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IDF725AD0E44911DA8D70A0E70A78ED65) , which provided:

“(1) Before fixing the amount of any fine to be imposed on an offender who is an individual a court must inquire into his financial circumstances.

(2) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.

(3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

(4) Subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.”

42 There can be no doubt, in our view, that the appellant was a man of very substantial wealth. The prosecution had put forward the best information that it had, namely that estimates of his wealth were £300 million. The appellant chose not to dispute that. The judge was entitled to proceed on the basis that his wealth was £300 million.

43 It was the judge's duty to impose a fine that would not only punish the appellant for what he had done for commercial gain but which would also deter others and protect the public. As the judge rightly identified, the protection of the environment and particularly protection of SSSIs are of great importance. SSSIs represent the common heritage of mankind; they are not subject to the commercial interests of a person who holds the land for the time being. It is also important to take account of the obvious fact that Natural England has significant difficulties in monitoring SSSIs; deterrence is of considerable importance. The fine therefore had to be of such a size that it would achieve each of these objectives. ***\*379***

44 It was urged upon us that a man in the appellant's position and possessing very substantial wealth would suffer a very considerable loss of reputation and have recorded against him a conviction for a crime. We were told that as a result of the proceedings, not only had the appellant lost his good character but he and his family had had to move from the area.

45 We accept that on the judge's findings, particularly the rejection of the veracity of the appellant's explanation, the finding of gross negligence and the condemnation of the tactics adopted to obstruct justice, the appellant should have suffered a considerable loss of reputation and be held in opprobrium by the public. But apart from the evidence of his family moving, no material was put before the judge or before us as to the actual effect on his business, livelihood or reputation. Although we will have regard to the opprobrium in which the appellant should after his conviction be held and take it into account as a factor, it is not a factor for the reasons we have given to which we can attach very great weight.

46 The sentence imposed by the judge was imposed before the decision of this court in [*R. v Sellafield*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I1BF475A0803311E38B539562F9E02B55) , which gave guidance as to the approach to fines to be imposed on companies of very significant size. Applying that same approach to individuals possessing the scale of wealth of the appellant, a fine significantly greater than that imposed by the judge would have been amply justified for his grossly negligent conduct in pursuit of commercial gain, particularly when so seriously aggravated by his conduct in obstructing justice. A fine in seven figures should not therefore be regarded as inappropriate in cases where such a fine was necessary: (1) to bring home to a man of enormous wealth the seriousness of his criminality in cases such as this where there was gross negligence in pursuit of commercial gain; (2) to protect the public interest in SSSIs; and (3) to deter others. In the case of deliberate conduct in similar circumstances, a fine in relation to a man of similar wealth should be significantly greater, as that would be necessary to reflect the greater culpability. The fine of £450,000 imposed on this appellant cannot therefore be viewed as disproportionate.

47 There was no reason why the appellant should not in the circumstances we have set out have been ordered to pay the costs of the prosecution in full; the amount of those costs, vast though they were, were not challenged. Imposing such an order for costs was not in the circumstances of this case a factor to be taken into account in setting the level of fine.

48 The judge gave, in our view, proper weight to the aggravating and mitigating factors, including the partial restoration and plea. In our judgement there can be no possible grounds for criticising the fine imposed by the judge. Given the objectives of sentencing as set out in the [Criminal Justice Act 2003](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I5F97C0A0E42311DAA7CF8F68F6EE57AB) , it was entirely proportionate to the culpability and the harm caused. The appeal is dismissed.

49 We must add three footnotes.

(a) Power under s.162 of the Criminal Justice Act 2003

50 [Section 162 of the Criminal Justice Act 2003](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=IDF780020E44911DA8D70A0E70A78ED65) enables the court to make a financial circumstances order requiring a person who is convicted of an offence to make a statement of his financial circumstances. In the present case the court proceeded on the assumption that the appellant had assets of £300m. He did not seek to challenge this. His wealth may have been substantially greater. For the future the courts should in the case of wealthy individuals consider making an order requiring ***\*380*** a detailed statement of their assets and their income. It would ordinarily be desirable to require the information to cover a five-year period so that the court was able to take an informed view of the actuality of the offender's assets and income.

(b) Time to pay

51 In [*R. v B&Q Plc [2005] EWCA Crim 2297*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I32B52CD0E42811DA8FC2A0F0355337E9) this court made clear at [47]–[48] that in the case of a large company a fine should as a matter of course be paid either immediately or in a period to be measured in single figure days, unless cogent evidence was provided that more time was required; such a requirement would bring home to the offender the seriousness of the offending and the impact of the penalty. The same principles are applicable to individuals of enormous wealth.

(c) Compliance with orders pending appeal

52 The judge accorded the appellant 56 days to pay the prosecution costs and a further 56 days to pay the fine. The judge set a term of four years’ imprisonment in default of payment of the fine.

53 It was clear from the transcript that the prosecution objected to the request for a moratorium on payment and made it clear an application should be made to this court. We inquired as to the position at the hearing and were told no part of the fine or costs had been paid. We were told that the appellant had understood that the magistrates' court had suspended the fine. We made it clear that it was for the appellant to be satisfied that the magistrates' court had power to do so. The fine and the costs were paid on 5 December 2014, the day following the hearing.

54 It appears from a helpful note provided to us by Mr Matthews QC on 11 December 2014 that on the application for leave to appeal a request was made to the single judge to suspend the period for the payment of the costs and fine. On an inquiry of the office of this court, the then solicitors of the appellant were told on 28 August 2013 that this court had no power to make such an order; and that any application should be made to the magistrates' court who would enforce the fine. The prosecution were told of the position and expressed the view that the costs should be paid as swiftly as possible. The appellant's then solicitors then contacted the Carlisle Magistrates' Court and were informed that the enforcement had been passed to the Kendal Payments Processing Centre who would make a decision. On 4 September 2013, an official at the Kendal Processing Centre, without any apparent reference to the Crown Court or the prosecution, informed the then solicitors that the appellant's account was suspended pending the outcome of the appeal and no payments were required. On further inquiry on 18 September 2013, the same official at the Kendal Processing Centre stated that the Crown Court did not enforce fines and costs collections and that the whole of the account was suspended pending the outcome of the appeal. In the circumstances, no criticism should attach to the appellant for non-payment of the fine and costs within the time specified by the judge.

55 However, for the future, no such explanation will be acceptable. It is clear that the fact an appeal is pending does not operate to suspend the operation of any sentence or order of the Crown Court, whether it be imprisonment, payment of a fine or a confiscation order. Once made, the order is enforceable in accordance with its terms in the absence of the exercise by a court of any power to the contrary. It is for that reason that an applicant sentenced to imprisonment and who seeks ***\*381*** leave to appeal goes at once into custody and has to apply for bail under the statutory powers given to this court and the Crown Court. Similarly an appellant given community service has to carry it out: see [*R. v May [2005] EWCA Crim 367*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I57204B90E42811DA8FC2A0F0355337E9) , [*West Midlands Probation Board v Sutton Coldfield Magistrates' Court [2008] EWHC 15 (Admin)*](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=7&crumb-action=replace&docguid=I91B575E0C32F11DCA4569A59EF8150D7) .

56 There is no statutory or other power given to any court to suspend payment of a fine or costs. Once ordered by a court to pay a fine or costs, that order must be obeyed and the fine paid. If there had been a statutory power, no doubt Parliament would have made provision for matters such as the provision of security for payment and the payment of interest (as would be the case in a judgment of a civil court where a stay of execution can be granted by a court pending appeal). In the present case, no issue of security for the payment would have arisen, but the delay in the payment of the fine after the time allowed by the judge has resulted in HM Treasury not having the benefit of the receipt for about 13 months and for which it will receive no compensation by way of interest as there is no power to order any.

57 It is clear that the Payment Processing Centre at Kendal had no power to suspend the order of the court. There may be occasions for specified reasons applicable to the particular circumstances of a given case or type of case where the Executive branch of the state may decide not to enforce a fine pending an appeal. However, that decision cannot and does not suspend the order of the court. The decision does not in any way discharge the offender from the obligation to obey the order of the court and pay the fine or costs within the time specified by the court or be at risk of the penalty in default of payment.

58 There are good reasons for strict observance of the obligation to pay a fine notwithstanding the bringing of an appeal. Any suspension of the obligation is generally not in the interests of justice, as it benefits the offender as there is no power to award interest on a fine and as in many cases delay will make it more difficult to enforce the payment.