

Reasonable Excuses: What Might Be and What Might Not?

By Graham Gilbert

First, some context for this article: my wife and I are currently in the process of having a quite large building project done on our house, including the complete replacement of the bathroom. Last week, as part of that, we had new sanitaryware delivered which my wife was keen to go and inspect. However, given the times we find ourselves in, the question then arose as to whether or not such a trip was one permitted under the current lockdown: could it be considered that needing to ensure the right basin had been delivered constituted a “reasonable excuse” for breaking lockdown? And, if not, what might provide a reason to be out of the house? From that, I thought it might be useful to at least consider what “reasonable excuses” have come before the current situation.

The New Regulations

The reason for pondering what may amount to a “reasonable excuse” is part of the new regulations brought in by the government in light of the coronavirus pandemic: in this particular instance *The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*. Regulation 6(1) provides that:

During the emergency period¹, no person may leave the place where they are living without reasonable excuse. (emphasis added).

Regulation 6(2) then goes on to provide a non-exhaustive list of what *may* constitute a reasonable excuse. These include the examples that we are all now familiar with, such as leaving the home to buy “basic necessities, including food and medical supplies”², to exercise “either alone or with other members” of the household³ or to attend certain funerals,⁴ amongst others.

¹ Regulation 3(1) provides that the “Emergency Period” started when the regulations came into force and ends on a date to be determined by the Secretary of State

² Regulation 6(2)(a)

³ Regulation 6(2)(b)

⁴ Regulation 6(2)(g)

The Concept of Reasonable Excuse

The idea of a “reasonable excuse” is not a new one to the criminal law, indeed, it features so widely as to almost be familiar. Those found with an offensive weapon in public may seek to establish that they have a reasonable excuse for doing so.⁵ Similarly, those breaching various court orders may seek to establish a similar defence.⁶ The regularity with which the term is employed in statute means that there are some concepts or guidelines that may be drawn from previous cases which might assist in determining what can be a reasonable excuse beyond those circumstances provided by regulation 6(2) of the Coronavirus Regulations.

General Principles

There are certain obvious principles which have been established by previous cases:

- i. before a defendant has to establish whether they have a reasonable excuse for the prohibited activity, the prosecution must prove that the illegal conduct has occurred;⁷
- ii. once the prosecution has established a *prima facie* case, the burden switches to the defendant to show that they have such an excuse;⁸
- iii. the standard of proof that the defendant must satisfy is the balance of probabilities;⁹
- iv. the test for whether or not a reasonable excuse exists is not wholly subjective;¹⁰ and
- v. whether the defence is made out is fact-specific and the tribunal has a wide-ranging discretion as to whether it finds that it is established or not.¹¹

Specific Reasonable Excuses

Of course, the discretion afforded to fact-finding tribunals means that too greater study of what may or may not amount to a reasonable excuse is of limited assistance. However, much judicial brain power has been used up on whether certain general topics are even capable of amounting to a reasonable excuse that a tribunal can consider.

⁵ Section 1(1) Prevention of Crime Act 1953

⁶ See, for examples, section 5(3) Protection from Harassment Act 1997 (Restraining Orders); section 103I(1) of the Sexual Offences Act 2003 (Sexual Harm Prevention Orders) and section 30(1) of the Anti-Social Behaviour, Crime and Policing Act 2014 (Criminal Behaviour Orders).

⁷ *Densu* [1998] 1 Cr App R 400

⁸ *Ibid*, fn 7

⁹ *Brown* (1971) 55 r App R 478

¹⁰ *N v DPP* [2011] EWHC 1807 (Admin)

¹¹ *Garry v CPS* [2019] EWHCA 636 (Admin)

Given the reported rise in instances of domestic violence occurring whilst countries are in lockdown, it may be that whether it is acceptable to leave one's property to assist in the defence of another, or to prevent another entering one's own property, is something that the courts will need to consider. The courts have previously considered that a threat to one's safety must be "imminent" for it to be legitimate to carry an offensive weapon.¹² It is a matter for a jury whether an attack is 'imminent enough' to justify the carrying and thus provide a reasonable excuse. It has been held to not be reasonable to carry a weapon as a general precaution.¹³

Applying these broad principles to leaving one's property, it could be strongly (and, some might suggest, rightly) argued that a person who left their home to prevent an imminent attack by a third party would have a reasonable excuse for doing so. However, it would not be reasonable to spend all day outside of the home *in case* someone known to a person was the victim of violence. It must also be in doubt, applying the same principles, that one could station oneself outside a neighbour or friend's property to ward off a suspected or distantly anticipated attacker.

The other broad topic that has exercised the courts in similar areas is a defendant's knowledge or mental state. Unsurprisingly, given the need to prohibit the carrying of weapons, the idea that a defendant could simply say they forgot they were carrying an offensive weapon or were subject to a court order has been given short shrift by the courts¹⁴ because, as the Court of Appeal have noted, "it is an all too easy assertion for a defendant to make in an attempt to avoid conviction".¹⁵ Similarly, it is unlikely to trouble us much here: show me someone who claims to have forgotten that they are not permitted outside except for limited reasons in the current climate, and I will show you someone who has lived in a cave without wi-fi for six months.

However, it has been suggested that a defendant's mental state may be relevant to the issue of whether or not they have a reasonable excuse for committing a prohibited act. As was noted in *B v DPP*¹⁶ "if the [defence of] reasonable excuse arose in any given case, a defendant would be able to raise his state of mind at the time of the alleged breach since the state of mind would usually be relevant to the issue of reasonable excuse".

¹² *Evans and Hughes* [1972] 3 All ER 412

¹³ *Evans v Wright* [1964] Crim LR 466, DC

¹⁴ *Glidewell* [1999] EWCA Crim 1221; *DPP v Gregson* (1993) 96 Cr App R 240; *Hargreaves* [1999] EWCA Crim 2150

¹⁵ *Nicholson* [2006] 1 WLR 2857

¹⁶ [2012] 1 WLR 2357

This suggestion gives rise to an interesting consideration in light of the current situation. We have been told repeatedly how important exercise is for a person's mental health – and this has been catered for in the regulations so that *does* amount to a specific reasonable excuse. But what if a person was, for example, claustrophobic and lives in a small property or in a flat share where they are confined to their room? Equally, what if a person has a sudden panic attack and has to step out of the house onto a public area for a moment? One might even wonder whether a person who was not in their right mind would have to seek to establish that they had a reasonable excuse for being outside. All of these, given the relevance of the underlying mental state, *may* provide someone with a reasonable excuse to counter an allegation under Regulation 6(1).

Of course, much of the above is conjecture: there is no way of knowing how case law around such a new piece of legislation might develop (and it might be hoped that there won't be time for such to happen in this instance). However, the above might provide some helpful guidance or, at the very least, a steer as to what additional reasons could be reasonable excuses. One thing is clear, however: the inspection of a new toilet is unlikely to be such, much to my wife's annoyance.

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