



A Comprehensive Ban on Holding a Mobile Phone While Driving ... Finally!

R (On the application of Andrew Ollins) v
Lavender Hill Magistrates' Court [2025] EWHC
263 (Admin)

Keywords

Driving, mobile phone use, road traffic offending

Andrew Ollins was convicted of using a mobile phone whilst driving contrary to s.41D (b) Road Traffic Act 1988 which prohibits the use of a mobile phone contrary to a construction and use requirement. That requirement is under Regulation 110 of the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) (as amended). In these proceedings, Ollins launched a judicial review of the decision of Lavender Hill Magistrates Court for refusing to state a case following the claimant's conviction for the offence.

A person convicted at the magistrates' court has a right under s.111 Magistrates' Courts Act 1980 to request the magistrates state a case so the legality of the decision (or jurisdiction) can be questioned in the High Court. The Magistrates' Court in Lavendar Hill relied on s.111(5) to refuse to state a case on the basis that the application under s.111 by the applicant was frivolous given an earlier High Court interpretation of the offence in *R v Bendt* [2022] EWHC 502 (Admin). The claimant Ollins requested that the High Court, under s.111(6) Magistrates' Courts Act, issue an order of mandamus (a mandatory order) forcing the magistrates to state the case for an appeal.

This was the procedural history of the case, but the ultimate aim of the defendant was to challenge the basis of conviction, that he was legally guilty of the offence under s.41D Road Traffic Act 1988. The core of the case was whether the claimant was rightly convicted and had no prospect of an appeal (thus making the s.111 order frivolous). Additionally, a second attack on the magistrates' decision related to whether the defendant, if he was rightly convicted, was nevertheless entitled to have a case stated regarding the magistrates' refusal to consider 'special reasons' for not imposing the normal penalty as part of the justices' sentencing decision.

The Facts of the Offence

The claimant was driving his car on a public road whilst making a telephone call to his father via the car's Bluetooth entertainment system. His phone was sitting on the front passenger seat of the vehicle and when he was forced to break suddenly, the claimant instinctively grabbed his phone to stop it falling into the footwell of the car. The claimant agreed these facts and on that basis the justices convicted him and refused to state a case due to his admissions providing no basis for challenging the ruling.

Mobile Phone Use

In refusing to state a case the Magistrates' Court relied on the High Court decision in *R v Bendt*. In *Bendt* the defendant was convicted of using their mobile phone whilst changing a song to play via the car's

Bluetooth device. The court in *Bendt* held that this amounted to using a mobile telephone to perform an ‘interactive communication’. The need for a ‘interactive communication function’ in regulation 110 was removed in 2022 to widen the scope of the activities for which it was prohibited to use a mobile telephone whilst driving. This change in the law was due to an earlier High Court decision in *DPP v Barreto* [2019] EWHC 2044 (Admin) in which it was held that using a mobile phone handheld to film an accident whilst driving did not constitute an ‘interactive communication function’.

In *Bendt* the High Court examined the use of Bluetooth technology and held that it involved ‘communicat[ion] with another device ... A Bluetooth connection certainly was not incidental to [...] use of the telephone’. (at [14]) The use of Bluetooth, according to the court in *Bendt*, was an interaction between the telephone and the car’s Bluetooth system.

Clearly the claimant in this case faced a difficulty in overcoming the *Bendt* decision. The new regulation 110 issued in 2022 removed the need for a mobile phone to perform an ‘interactive communication function’. Instead, the 2022 regulations expanded the indicative list of activities that constitute ‘using’, including illuminating the screen, unlocking the device, checking notification, utilising the camera etc. Crucially, the list was also not exhaustive, paragraph 6(c) states ‘... the word “using” *includes* the following’ [emphasis added]. Thus, the list is not an exclusive list of use functions for the mobile phone but an indicative inclusive list of common mobile phone activities that fall within the definition of ‘using’.

The claimant in *Ollins* argued that notwithstanding the non-exhaustive nature of the list, the list of functions was predicated on the idea of active use for the function claimed to represent such use. In other words, when using his mobile phone here the logical and commonsense interpretation of paragraph 6 was that where it is alleged the defendant is using a mobile phone to make a telephone call (Paragraph 6(c)(v) of Regulation 110) then the touch (use) of that phone must be directed to that function. Thus, as the reason the claimant held the phone was to prevent it slipping onto the floor not to make the call (as it was ongoing), he did not hold or use it to make a call.

In effect, the Bluetooth had already been activated, the call had been made via the Bluetooth device and thus his subsequent holding of the device had no effect on the Bluetooth telephone call. Here, the claimant relied on the dictionary definition of ‘use’ as ‘to take, hold or deploy [something] as a means of accomplishing [something].’ On this interpretation the claimant could not have been guilty of the s.41D offence since his taking/holding of the phone was not a means of accomplishing the call but as an instinctive means of preventing it from dropping onto the floor.

The CPS were joined as an interested party and argued for their own common-sense interpretation. Relying on paragraph 6(a) of the 110 regulation, the CPS argued that there were two routes to conviction open to the justices based on the agreed facts. That is the phone was either ‘being held at some point whilst being used’ (6(a)) or ‘it must be held at some point while being used’ (6(a)). In respect of the defendant, whichever way the court looked at the matter the defendant was doing one of those things. The claimant held the phone whilst it was being used to make a call or had to hold it at some point whilst being used.

HELD, rejecting the claimant’s application for a case to be stated on appeal but allowing the claimant’s application in respect of the magistrates’ failure to consider special circumstances in relation to the sentence to be imposed. The Court rejected the defendant’s interpretation of regulation 110. The court held that regulation 110 imposed a single unitary question ‘whether the claimant was using a mobile phone to make a voice call while holding the device in his hand?’ (at [23])

The court rejected any attempt to complicate the regulation – whether a phone was using Bluetooth or not, there is use of a mobile telephone: ‘if there was no mobile phone, the Bluetooth connection would not operate’ (at [25]). Further the court noted ‘[a] person may say that they are handsfree, but they are using the mobile phone through a hands-free system.’ (at [25])

The court preferred the simple interpretation offered by the CPS that since 6(a) includes the phrase ‘if it is ... held at some point while being used’ then any holding of the telephone whilst it is being used for any purpose mentioned in 6(c) (and beyond those purposes since 6(c) is not exhaustive) is an offence. The court stated that the claimant’s interpretation would require words to be inserted into the statute which

were not clear and would also require all manner of factual determinations in each case into what the phone was being used for and the purposes of use for which it was being held. Instead, the court preferred the simple interpretation, which was also consistent with the purpose of the legislation to restrict distractions whilst driving. The court held

It is immaterial whether the device is being held to enable or facilitate the use of the device. The Regulation is clear that the only link between the concepts of holding and using is that it has to be held whilst it is being used. (at [29])

Accordingly, the court found that the justices were right to refuse to state a case in respect of the conviction providing they indicate why they formed that opinion (*R v North West Suffolk Mildenhall Magistrates Court ex parte Forest Heath District Council* [1997] EWCA Civ 1575). Here the justices clearly did so, and their legal basis for doing so in respect of the s.41 offence was legally sound and thus the request was ‘frivolous’.

The court went on to consider the refusal to state a case in regards of ‘special reasons’ rejected in relation to the defendant’s punishment. Here the court found that the justices had misdirected themselves to the relevant law and a mandamus order would be made under s.111(6) Magistrates Court Act 1980.

In rejecting the defendant’s plea of special reasons why the normal punishment should not be imposed (penalty points and a fine) the magistrates held that the circumstances of the telephone call did not amount to special reasons. The High Court, relying on *Whittall v Kirby* [1947] KB 194 and *R v Wickens* (1958) 42 Cr App R 236, held there are 4 criteria that justices must examine in special reasons mitigation. Firstly, there must be a mitigating or extenuating circumstance. Secondly, the claim must not amount to a defence in law (since by reason of conviction this cannot apply), thirdly, the reasons must be directly connected with the commission of the offence and finally, it is a matter a court ought to properly take into consideration when imposing punishment.

The High Court here found that the justices had considered the first two criteria and accepted them (that the claimant had mitigating circumstances and had no defence in law), that much was clear from the brief reasons given for refusing to state a case. However, the justices had not considered either the third or fourth criteria. In particular the finding from the justices that there were mitigating circumstances but then no reasons furnished for why the court felt that they ought not to take them into consideration was a clear error.

The CPS argued that whilst holding a telephone to one’s ear might amount to an aggravating feature, merely holding it (in this case to prevent it falling) could not amount to mitigation since the offence involves holding the device. The Court refused to discuss this position since the justices in the original case had already accepted there were mitigating circumstances, thus they were required by the fourth question to at least show consideration of whether they ought to take it into account.

The court held that as the justices had not considered points 3 and 4 in their refusal to state a case then the claimant was entitled to a mandamus order since this was not a frivolous application.

Commentary

Mobile Phone Use

This is certainly a welcome clarification of regulation 110 and as the court rightly pointed out it is in accordance with both the wording and purpose of regulation 110. The 2022 amendment to regulation 110 was made in response to the *Barreto* ruling (Roger Tyers, ‘Changes in the law on driving while using a mobile phone’ (7 March 2022) <https://commonslibrary.parliament.uk/changes-in-the-law-on-driving-while-using-a-mobile-phone/> accessed 4 September 2025, the government clearly set out to widen the scope of the regulations following the narrow interpretative approach in *Barreto*. The 2022 regulations sought, as far as possible, to prohibit all use of a mobile phone whilst driving – with the

exception of limited circumstances regarding parking and toll payment by phone and use of a phone in a handsfree cradle.

The judgment in Ollins here provides clarity that any use of a mobile phone involving holding the device whilst driving is an offence under s.41D Road Traffic Act 1988, regardless of the purposes for which it is being used. The single unitary question advocated by the court goes squarely to both the purpose and form of regulation 110: Was the phone being held whilst at the same time it was being used? If the answer to that is yes then any reasons for holding the device are potentially mitigation for a special reasons pleading, they are not relevant to the question of whether D has committed the offence.

In respect of the CPS arguments about the circumstances of holding providing no mitigation, this must not be right. In any other strict liability motoring offence special reasons are regularly pleaded, particularly speeding, where the circumstances of the offence are the same as the offence. Speeding from necessity and holding a mobile phone from necessity are clearly capable of providing mitigation – even in a case whereby there may be the aggravating factor mentioned by the CPS in their submissions (holding the phone to one's ear). Receiving an urgent call where one is on the way to a hospital must clearly be considered as a mitigating factor in a relative who takes that phone call whilst driving. It is no defence (and thus the second criteria in *R v Wickens* is satisfied) but it surely may provide mitigation that should be heard by the magistrates. The CPS's suggestion that merely holding a device is just absence of aggravation would, in effect, elide the difference between the second and fourth criteria for special reasons. It would elevate the second test, as happened in this case, such that the justices would not need to consider whether it ought to listen to special mitigation if it already determined a defendant had no defence in law.

As regards the law more broadly on mobile phone use whilst driving it remains an open question whether anything further could be achieved. It is clear, beyond doubt, that using a mobile phone whilst driving is a risky and dangerous activity, whether the device is being held or handsfree (Gemma F Briggs, Graham J Hole and Michael F Land, 'Imagery-inducing distraction leads to cognitive tunnelling and deteriorated driving performance' (2016) 38 *Transportation Research Part F: Traffic Psychology and Behaviour* 106). Whether a law could be drafted that would prohibit all use of this ubiquitous device is a complex question. Indeed, it is somewhat similar to the complex fact sensitive question the claimant advocated for in their interpretation of regulation 110. Criminalising all use of a mobile phone whilst driving, where such devices now act as substitutes for our social lives, our main means of communication, navigation and our cultural identity will always be problematic, doubly so in our accelerated lives where such devices are our main method of connection with our social and professional networks (Wells, H., & Savigar, L. (2017). Keeping up, and keeping on: Risk, acceleration and the law-abiding driving offender. *Criminology & Criminal Justice*, 19(2), 254–270). <https://doi.org/10.1177/1748895817738555>.

Given the extensive range of functions a mobile phone is now capable of it will be difficult, if not impossible, to gain public support for a prohibition of activities that are not, by their nature, problematic. It is not morally problematic to use a mobile phone; it only becomes so when one is driving. Whether a 'handsfree' law could ever capture public support is doubtful. Where the motor car is concerned it is perhaps fair to say that public attitude views any attempts to restrict activities whilst driving as controversial and subject to challenge.

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