

Introductory Note by FB

The letter below is a further addition to my writings on children and the criminal law. Others are included within the Topic with that title. It can be found on this website at www.francisbennion.com/topic/childrenandcriminallaw.htm

Letter in Criminal Law and Justice Weekly

Simple child nudity is not 'indecenty'

Alisdair A. Gillespie correctly says (p. 796, *ante*) that in *R. v O'Carroll* [2003] EWCA Crim 2338 the court held that simple nudity could amount to indecency. The decision is disquieting, and I believe wrong. Each of the photographs concerned was merely "of a young naked child engaging in normal outdoor activity such as playing on a beach". The court upheld a direction to the jury that "A photograph of a child is indecent if in your judgment it offends against recognised standards of propriety." The court held that this did not contravene the requirements of clarity and certainty imposed by art. 7 of the European Convention on Human Rights. The jury had convicted.

In my submission an appeal to "recognised standards of propriety" is much too vague and uncertain to satisfy art. 7. Prima facie a photograph of naked children playing normally on a beach is not indecent. The courts should rule accordingly.

Yours faithfully,

Francis Bennion