

# IN THE SUPREME COURT OF THE UNITED KINGDOM

## In the matter of R (on the application of Friends of the Earth Limited and others) v Heathrow Airport Ltd and In the matter of Her Majesty's Attorney General v Crosland

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### APPLICATION ON BEHALF OF THE RESPONDENT FOR THE PROCEEDINGS TO BE LIVE-STREAMED

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1. In these proceedings, which originate with a complaint from the Supreme Court, Her Majesty's Attorney General ("**HMAG**") applies for the committal to prison of Tim Crosland ("**the Respondent**") on the grounds that he breached the embargo on the Supreme Court's judgment concerning the expansion of Heathrow Airport. HMAG contends that in so doing, the Respondent committed contempt of court. The hearing is due to be heard by the Supreme Court on 10 May 2021 in Court 6 of the Royal Courts of Justice.
2. On 17 March 2021 the Court directed that:  
  
**"The hearing will be held in public".**
3. On 10 May, it is likely that the UK will be subject to "Step 2" in the Government's "Roadmap Out of Lockdown"<sup>1</sup>. Social distancing rules will continue to prevent the indoor meeting between different households; all gatherings of over 30 people will be illegal; and the maximum number of people able to attend special events, such as weddings and commemorative events, will be 15. The Registry Manager for the Supreme Court has informed the Respondent that:  
  
**"My understanding is that the maximum capacity in court 6 for legal teams and the public is 9/10".**
4. In reality, in the absence of provision for the press and public to follow proceedings remotely, the hearing will not be a public hearing at all. It will be a closed hearing, inaccessible to all but a select few, whose identities, presumably, will need to be agreed upon in advance. That is the definition of a hearing that is private and closed and it would be disingenuous to assert the contrary.

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<https://www.gov.uk/government/publications/covid-19-response-spring-2021/covid-19-response-spring-2021-summary>

5. Such an outcome would run counter to the Court's own order; contravene the principle of public and open justice; and breach the Respondent's right to a fair hearing under Article 6 of the European Convention on Human Rights ("**ECHR**"). Given the statutory provision for the live-streaming of Supreme Court proceedings, such an outcome may easily be avoided and therefore ought to be avoided.
6. The Respondent applies to the Court for the proceedings to be live-streamed or, in the alternative, for permission for third parties to live-stream and record the proceedings, in accordance with section 9(1A) of the Contempt of Court Act 1981:

**"In the case of a recording of Supreme Court proceedings, subsection (1)(b) [the prohibition on publishing recordings of proceedings] does not apply to its publication or disposal with the leave of the Court."**

7. The reasons for the Respondent's application, over and above the fundamental principle of public and open justice, are as follows.
8. First, the Supreme Court is in this case both complainant and judge. Even if such compromise to the principle of impartiality is inherent to contempt proceedings, it is a circumstance which nevertheless calls for the highest level of openness and transparency.
9. Second, the case gives rise to matters of substantial public interest as evidenced by a letter sent to the Supreme Court on 30 March 2021, signed by more than 130 leading lawyers, academics and policy-makers concerning these proceedings, including two Members of Parliament, the Government's former Chief Scientist, Sir David King, and experts from Austria, Australia, Brazil, Canada, Ecuador, France, Germany, Ghana, Guyana, Ireland, Kazakhstan, Lebanon, Liberia, Mexico, Netherlands, Nigeria, Norway, the Solomon Islands, South Africa, South Sudan, Spain, UK, the US and Vanuatu, which states:

**"We urge you to consider the grave implications of this judgment. The highest court in the United Kingdom has set a precedent that major national projects can proceed, even where they are inconsistent with maintaining the temperature limit on which our collective survival depends.**

**Indeed, the precedent goes further still. It says that the Government is not bound even to consider the goals of an Agreement that is near universally agreed. Not only does that undermine the UK's status as a "champion of the Paris Agreement," just ahead of the critical climate talks in Glasgow later this year (COP26). It also substantially reduces humanity's prospects of maintaining that limit and hence, averting disaster.**

**The rule of law, including international law, is a vital part of the fabric of a democratic society and it is key to securing the safety of our interconnected world. We understand why Tim Crosland of Plan B. Earth felt it necessary to raise the alarm about the goals of the Paris Agreement**

being ignored by British courts. We remind the Court of its own obligations under the Human Rights Act 1998 to safeguard the right to life. That entails taking all reasonable measures to ensure respect for the entirety of the Paris Agreement.

The climate crisis jeopardizes civilization and the natural world alike, with those who have contributed least to the crisis, the younger generation and the Global South, on the frontline. With all that is at stake, in the UK and beyond, we urge the Court to take appropriate steps to mitigate the profound harm its judgment has caused and to consider the actions of Tim Crosland in this light.”<sup>2</sup>

10. It is evident from this letter, not only that the notoriety of the Supreme Court’s judgement extends to all continents, severely compromising the UK Government’s credibility ahead of its Presidency of the critical UN climate negotiations at COP26, but also that there is a consequential and substantial public interest in these proceedings against the Respondent.
11. Third, the case does not engage the privacy or Article 8 rights of any individual other than (arguably) those of the Respondent, who makes this application and who consents to the live-streaming of proceedings.
12. Fourth, the Court is bound by the *Equality Act, 2010, section 149*, to take reasonable steps to avoid discrimination. Even pre-pandemic, the Royal Courts of Justice presented severe access difficulties for wheelchair users. In the context of the pandemic, the risks inherent to attending a full day’s hearing inside a courtroom discriminate against large sections of the population with protected characteristics, and with a particular vulnerability to COVID-19.
13. Fifth, in circumstances where attending an indoor court hearing carries inherent risk to both personal and public health, it would be contrary to the Court’s duty of care to compel those who wish to follow proceedings to take that risk when a safe alternative is easily available.
14. Sixth, Article 6(1) of the European Convention on Human Rights states as follows:

**“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to**

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<sup>2</sup> <https://planb.earth/wp-content/uploads/2021/03/Supreme-Court-Expert-Letter.pdf> (as reported here: <https://www.theguardian.com/environment/2021/mar/30/uk-criticised-for-ignoring-paris-climate-goals-in-infrastructure-decisions>)

**the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.**  
(emphasis added)

15. The public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is one of the principal means by which confidence in the court system is maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6(1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society (*Riepan v. Austria*, §27<sup>3</sup>; *Krestovskiy v. Russia*, §24<sup>4</sup>; *Sutter v. Switzerland*, §26<sup>5</sup>).
16. A public hearing is an essential component of Article 6. Any *de facto* exclusion of the press and the public from the hearing must be specifically justified with reference to one of the listed grounds. The Court, in interpreting the right to a public hearing, has applied a test of strict necessity whatever the justification advanced for a lack of publicity (*Yam v. the United Kingdom*, §54<sup>6</sup>). Social distancing requirements prevent the courtroom itself from being properly open to the press and the public. But that is no answer at all as to why the Court should decline the Respondent's application to compensate for that circumstance by providing for remote access to the proceedings. To the contrary, the Strasbourg jurisprudence is clear: the Court should take all reasonable measures to compensate for any interference with the normal protections afforded by Article 6 (*Krestovskiy v. Russia*, §29).
17. Seventh, it is a central part of the Respondent's case that matters which the Supreme Court ought properly to have referred to in its judgement, concerning evidence that Heathrow expansion would present a grave danger to the public, were excluded from the judgement, and consequently that the Supreme Court's judgment has propagated a false impression of the risks of the proposal. In such circumstances, particular importance should be attached to ensuring that the hearing is genuinely public and open and avoiding any perception that the Supreme Court is using the pandemic as a pretext to shield itself from proper scrutiny.
18. In conclusion, the Respondent is to be tried on a serious criminal charge, by the Supreme Court, which is also the complainant in this case. If convicted the Respondent faces a sentence of up to 2 years imprisonment. The case raises matters of global interest and concern, relating as it does to the Supreme Court's disregard for the Paris Agreement Temperature Limit "*on which our collective survival depends*". The Respondent contends that the Supreme Court's original judgment suppressed critical evidence from public view. To conduct such a trial in circumstances which effectively exclude the press and the public would run counter to the most fundamental principles of democracy and justice.

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<sup>3</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58978%22%5D%7D>

<sup>4</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-101314%22%5D%7D>

<sup>5</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57585%22%5D%7D>

<sup>6</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-200315%22%5D%7D>

19. On one side the scales, there are compelling reasons to provide for remote access to proceedings, including the requirements of Article 6 ECHR, the imperative to safeguard public health and the level of public interest in these proceedings. To date, no argument has been advanced by the Applicant against provision for remote access to proceedings.
20. In the event that there is no live-streaming facility in Court 6, RCJ, the Respondent can arrange, with leave of the Court, for the proceedings to be live-streamed.
21. If the Court rejects this application, and refuses to implement measures to ensure proceedings are genuinely open and accessible to the public and the press, the Respondent requests that the Court provides written reasons for that refusal, with a view to an appeal to the European Court of Human Rights, on the basis of a breach of Article 6.

**Tim Crosland**  
**Respondent**  
**31 March 2021**