“CONTEMPT OF COURT”

Supreme Court
10 May 2021

Opening

My Lords, I broke the embargo on the Heathrow judgment because I believed that:

> i) the evidence that Heathrow expansion would breach the Paris Temperature Limit of 1.5˚C, exposing the public to extreme danger, was being deliberately suppressed from the public domain, to smooth the progress of the £14bn project; and that
>
> ii)the antidote to that suppression was the spotlight of publicity that would follow from breaking the embargo.

I understood the personal risks of my action were likely to include:

> *adverse media and social media reaction
> *loss of professional status
> *imprisonment

I did not wish for any of those things.

But given the risks for my children, the public, and for all other life, of breaching the Paris limit, they seemed risks worth taking (and they still do).

Lord Bingham explained the rationale for my action more lucidly than I am able to myself, in his judgment in the case of Shayler, **B15/813, para. 21**

https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd020321/shayle-2.htm

> **“Sometimes, inevitably, those involved in the conduct of government, as in any other walk of life, are guilty of error, incompetence, misbehaviour, dereliction of duty, even dishonesty and malpractice. Those concerned may very strongly wish that the facts relating to such matters are not made public. Publicity may reflect discredit on them or their predecessors. It may embarrass the authorities. It may impede the process of administration. Experience however shows, in this country and elsewhere, that publicity is a powerful disinfectant. Where abuses are exposed, they can be remedied. Even where abuses have already been remedied, the public may be entitled to know that they occurred. The role of the press in exposing abuses and miscarriages of justice has been a potent and honourable one. But the press cannot expose that of which it is denied knowledge.”**

To the best of my knowledge and belief, such dishonesty and malpractice had occurred concerning the Heathrow expansion plans, involving the suppression of evidence that Heathrow expansion would breach the 1.5˚C temperature limit. I believed the spotlight of publicity was the best disinfectant for that malpractice, and the practical question was how best to achieve that, given that I'm a volunteer for a tiny charity with no PR department.

Had I waited for the judgment to be published in the ordinary way, my complaint would have been heard as the standard complaint of a disappointed litigant, protesting an unfavourable court ruling. No-one would have paid any attention. But by breaking the embargo, the press and the public wanted to know **"Why? Why would you risk so much for so little gain? What's the real story?"**

To answer that question, I need to do two things:

> First: explain the cover-up concerning the risks of Heathrow expansion, as I perceived it to be;
> Second: explain why breaching the embargo was a reasonable and proportionate measure to expose the cover up.

First, the Government cover-up.

By January 2018, the Intergovernmental Panel on Climate Change had shared its draft report with governments on the implications of breaching the 1.5˚C Paris temperature limit. The UK Government now understood three critical facts concerning its plans to expand Heathrow Airport:

First, for even a 50% chance of limiting warming to 1.5˚C, in accordance with the Paris Agreement, global carbon dioxide emissions, including from aviation, would need to reach net zero by 2050 at the latest, and most likely long before that **[A7/152]**;

Second, according to the Department of Transport's own analysis, Heathrow expansion would mean 40Mt CO2 every year by 2050 **[A7/153]**, just from UK aviation, in breach of the PTL;

Third, the consequences for the public of exceeding 1.5˚C would be dire, in particular for the younger generation in the UK and for everyone in the Global South **[A7/151]**.

What ought to have happened at that point was this. The Government should have levelled with the public and Parliament, as it was required to under the Planning Act, section 5. It should have said: ***"We can expand Heathrow Airport and expand our aviation sector; or we can decarbonise our economy in line with the Paris Agreement to avert climate collapse, but we can't do both."*** The Government should have said that, because that was the reality according to its own figures and estimates. A democracy only functions properly if the public

and Parliament are provided with the relevant information to inform a democractic decision. If not, the democratic process is subverted.

But that was not what happened. It appears that a decision was made to suppress the information that Heathrow expansion would breach the 1.5˚C temperature limit, to smooth the way for this project, in which so much economic and political capital had been invested, to progress. Instead of revealing the true situation to the public, the Department of Transport misled the public into believing that this was a **"have cake and eat it"** situation. That can be seen from the following documents:

A7/157, Gov response to the consultations on the ANPS: 8.18,8.19, 8.21.

"8.18 The Government notes the concerns raised about the impact of expansion on the UK's ability to meet its climate change commitments; the Government has a number of international and domestic obligations to limit carbon emissions.

8.19 The Government's position remains that action to address aviation emissions is best taken at the international level, given aviation is an inherently global industry and climate change is a global rather than local environmental issue [+ mention of Paris Agreement]

8.21 This analysis found that under both scenarios all schemes were consistent with the UK's carbon obligations.

Chris Grayling was the Transport Minister at the time. Following his statement on Heathrow expansion to Parliament on **5 June 2018**, the CCC, the Government's statutory adviser on climate change, smelt a rat. On 14 June, Lord Deben and Baroness Brown took the unusual step of writing a public letter to Grayling: **A7/158**

> **"Dear Secretary of State, The UK has a legally binding commitment to reduce greenhouse gas emissions under the Climate Change Act. The Government has also committed, through the Paris Agreement, to limit the rise in global temperature to well below 2°C and to pursue efforts to limit it to 1.5°C**
>
> **We were surprised that your statement to the House of Commons on the National Policy Statement on 5 June 2018 made no mention of either of these commitments. It is essential that aviation's place in the overall strategy for UK emissions reduction is considered and planned fully by your Department."**

There was a good reason why Grayling hadn't mentioned the Paris Temperature Limit to his fellow MPs. He knew Heathrow expansion was inconsistent with that limit, and had assessed Heathrow expansion against the historic limit of 2˚C, rejected by the UK and nearly all other governments in 2015 as exposing the public to intolerable risks of catastrophe.

An honest reply to Lord Deben and Baroness Brown would have been: "**I didn't mention the Paris Temperature Limit because Heathrow expansion is inconsistent with that limit. But it could be consistent with the discredited 2˚C limit. Isn't that good enough?"**

But that, of course, is not how he replied. He replied on **20 June 2018** as follows **A7/159:**

> **"Thank you for your letter of 14 June 2018, about the proposed Airports National Policy Statement and greenhouse gas emissions. I note your surprise that the UK's commitments to reduce greenhouse gas emissions were not specifically addressed in the oral statement to the House of Commons but I can assure you that the Government remains committed to meeting our climate change target of an at least 80% emissions reduction below 1990 levels by 2050 and remains open and willing to consider all feasible measures to ensure that the aviation sector contributes fairly to UK emissions reductions. I hope you will understand that I am not always able to include all the detail I would like in an oral statement."**

He is careful not to mention the Paris Temperature Limit directly, nor the 2˚C limit he actually used instead, nore any international obligation (even though the Government had decided to address aviation emissions at the international level). He implies that such matters are mere "details".

Then on 26 June 2018, DfT published a post-adoption statement **[A7/158]**:

> **"The Government acknowledges that the scheme is likely to result in an increase in emissions from activities at Heathrow Airport and that any increase in emissions must be kept within the UK's commitments. This has been considered using two future policy scenarios, meeting the UK's overall emissions target in the Carbon Capped case, and meeting the UK's commitments under any future international agreement in a Carbon Traded case."**

But that just wasn't true. The reality was that on the Department of Transport's own evidence, Heathrow expansion would, by 2050, be breaching the requirements of the Paris Agreement by around 40Mt CO2 every year.

Plan B commenced litigation in August 2018. Our sole ground of the claim was that the Government had failed to give proper account to the Paris Agreement. Initially the Government disputed that proposition, implying that they had considered the Paris Agreement.

But then two things happened:

a) First, the Government found itself unable to explain how 40MtCO2 a year by 2050, which was its own evidence, was the same as net zero CO2 a year by 2050. To use a financial analogy, the Government could not explain how having a

budget of zero pounds a year in 2050 was the same thing as having a budget of £40million a year in 2050.

b) Second, the Government disclosed its witness statements which revealed that it had actually measured Heathrow expansion only against the discredited 2˚C target and not the PTL.

At that point the Government made a surprise formal concession that they had not in fact taken the Paris Agreement into account at all because they considered it "not relevant". I remember the moment vividly ....eyebrow raising, " mr Maurici … if not relevant unlawful to take it into account?" "Yes M'Ld". As an unincorporated Treaty, it was not legally binding. Mr Justice Holgate required Mr Grayling to amend his pleadings accordingly.

That pleaded position was set out clearly in the judgment of the Court of Appeal at **para. 186 [A7/154] / B36:**

> **"It is common ground that the Secretary of State did not take the Paris Agreement into account in the course of making his decision to designate the ANPS."**

The Court of Appeal ruled **[para 212]**:

> **"It is clear ... that it was the Government's expressly stated policy that it was committed to adhering to the Paris Agreement to limit the rise in global temperature to well below 2ºC and to pursue efforts to limit it to 1.5ºC."**

Consequently the Court of Appeal concluded **[para 283]** :

> **"The Paris Agreement ought to have been taken into account by the Secretary of State in the preparation of the ANPS, but was not … What this means, in effect, is that the Government when it published the ANPS had not taken into account its own firm policy commitments on climate change under the Paris Agreement."**

The Government chose not to appeal the decision, implicitly accepting the Court of Appeal's decision. On 4 March 2020, the Prime Minister stated in Parliament **[A7/154]**:

> **"we will ensure that we abide by the judgment and take account of the Paris convention on climate change".**

The ruling was welcomed across the press, including by editorials in the Times and the Financial Times. The TImes Headline was:

> **"The Times view on the Court of Appeal's rejection of Heathrow's expansion plans: Lucky Escape"**

Heathrow Airport Ltd, however, appealed the judgment.

Following a 2 day hearing in October, on 9 December 2020, the parties, including PLan B.Earth, the charity of which i'm the Director, received the Supreme Court's draft judgment. The Supreme Court's legal analysis seemed to me flawless. On the facts set out in the Supreme Court's draft judgement, Heathrow expansion was indeed perfectly lawful. According to the draft judgement:

- The Government had taken the Paris Agreement into account (even though the Government's pleaded position was that it had not done so) [**B37, para 125: "the Secretary of State took the Paris Agreement into account"].** By the omission of the word "not" the Supreme Court had overturned the Court of Appeal's ruling and demolished Plan B's case. Both proceeded from the Government's pleaded position that the Government had not taken the Paris Agreement into account.
- All reference to the Government's reliance on the discredited 2˚C limit instead of the PTL was excluded from the judgement, although that was central to Plan B's case.
- And there was no reference to the fact that Heathrow expansion would cause the Paris Temperature Limit to be breached by leading to 40MtC02 a year from UK aviation.

The Supreme Court had overruled the Court of Appeal not by a different interpretation of the law. But by the substitution of alternative facts, and by the omission of the evidence which showed those facts to be false.

The purpose of circulating draft judgements, as the Attorney General acknowledges, is to correct factual errors before the judgement is published. But everyone understands there is no prospect of the judgement itself changing at that stage. Ordinarily, it might be a name or a date that is wrong, or maybe the T-shirt was blue instead of red. But nothing that's going to change the outcome.

So, it was clear there was a serious problem. Because the factual errors made by the Supreme Court in its draft judgment formed the lynchpin of its reasoning. The Supreme Court couldn't correct those errors without also correcting its judgment, which in reality, it was almost certainly not going to do. By this stage it seemed to me or less inevitable that the Supreme Court was going to issue a judgement that compounded the Government's suppression of evidence concerning the fact that Heathrow expansion would breach the Paris Limit.

I wrote to the Supreme Court and explained the factual errors, and pointed them to the agreed documentary evidence which exposed these matters as factual errors. Given the significance of the issues, I copied in all the Parties to the proceedings who were also in possession of the draft judgment, so that all parties had the opportunity to intervene if I was somehow misrepresenting the facts. Nobody intervened. I explained that if the Court were going to publish a judgment which I believed misled the public about the dangers of Heathrow expansion, I would feel bound to make a public statement to set the record straight, recognising that as a volunteer lawyer, working with a small volunteer-based charity, my capacity to make myself heard would be

limited. I asked for permission to seek external legal advice about making a public statement but was refused permission to do so.

I almost talked myself into believing that waiting for the judgment to be published to make a statement would have the same impact as breaching the embargo, because that would have been so much easier for myself and my family; but I knew that wasn't the case - I knew I needed to break the embargo to get the extreme danger of Heathrow expansion into the public domain. So that's why we're here today. And that's why I'm under investigation by the Bar Council. And that's why Plan B is under investigation by the Charity Commission.

I had no intention whatsoever to interfere with the course of justice. The case was over, and the outcome would in any case be made public 22hrs later. My sole intention was to counter the Government's interference with the democratic process, by the deliberate suppression of vital information concerning the dangers of Heathrow expansion, which had been aided and abetted by the Supreme Court.

The Attorney General prosecutes me for highlighting the Government's dishonesty and climate hypocrisy in the year of COP26. It's the classic case of retribution against the whistle-blower by those attempting to conceal their own guilt.

Once it's understood that Heathrow expansion would breach the 1.5˚C Paris limit, consider the consequences: mass loss of life and the loss of the conditions which make the planet habitable.

To all sensible people, all people of conscience and all faithful public servants, the early disclosure of the outcome of the judgment was utterly trivial by comparison."

[15 mins]