IN THE SUPREME COURT OF THE UNITED KINGDOM

On appeal from the Supreme Court sitting as a court of first instance

[2021] UKSC 15

TIM CROSLAND

Appellant

-v-

HER MAJESTY'S ATTORNEY GENERAL

Respondent

GROUNDS OF APPEAL

A. INTRODUCTION

1. On 10 May 2021, Lord Lloyd-Jones, Lord Hamblen and Lord Stephens, sitting as a court of first instance ("the court below"), held that the Appellant's conduct in disclosing the outcome of the Supreme Court's judgment on Heathrow expansion prior to publication of the judgment, constituted a criminal contempt of court.

2. The court below fined the Appellant £5,000. In court, the costs order it made was as follows:

> **"We make an order that the respondent pay the costs of the application to be assessed if not agreed."**

3. Ultimately the written order on costs, which was not finalised until 21 June, took a different form, stating:

> **"The Respondent pay the Applicant his costs of these proceedings, in the sum of £15,000 to be paid by 12 July 2021."**

4. The Court subsequently extended the deadline for payment of costs to 31 July, rejecting the Appellant's application for payment to be deferred for six months or until the conclusion of his appeal.

5. The order confirmed the Appellant's right to appeal:

> **"If permission to appeal against the finding of contempt, the penalty imposed and the order for costs is required, the Respondent be granted permission to appeal to a differently constituted panel of the Supreme Court."**

6. The Appellant appeals the finding on contempt of court and the order on costs.

B. GROUNDS OF APPEAL

7. **GROUND 1: In violation of Articles 6 and 10 of the European Convention on Human Rights ("ECHR"), the court below cast a veil over the Appellant's principal line of defence, which was that evidence that Heathrow expansion would breach the Paris Temperature Limit of 1.5˚C, with catastrophic implications, had been wrongly concealed from the public, such that there was an overriding public interest in shining a spotlight on this concealment, in accordance with ECHR Article 10. The judgment of the court below fails even to mention that this was the Appellant's defence.**

8. **GROUND 2: The court below wrongly disregarded a letter, submitted into evidence on behalf of the Respondent, which had been sent to the Supreme Court by leading scientist and economists, including the Government's former Chief Scientific Adviser, Sir David King, and which stated:**

> ***"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."***

9. **GROUND 3: Contrary to Article 6 of the ECHR, the court below was not an independent and impartial tribunal since it was also the complainant in the case, in that it had lodged the original complaint against the Appellant to the Attorney General, and also separately filed a complaint against the Appellant to the Bar Council. In so far as such a compromise to impartiality was inevitable, it was incumbent upon the court to adopt appropriate mitigating measures, including by acknowledging the existence of such compromise. It wrongly failed to take any such measures. To the contrary it adopted a number of measures which reinforced the appearance of bias.**

10. **GROUND 4: The Respondent failed to disclose to the Appellant evidence that in July 2020 the Government had a) deliberately breached the Court embargo in the**

judgment in the case of Shamima Begum; and b) subsequently failed to conduct an investigation into that breach. Such evidence was capable of assisting the Appellant in the conduct of his defence, and ought to have been disclosed in accordance with ECHR Article 6 and the Criminal Procedure and Investigations Act 1996, section 3.

11. **GROUND 5: The ruling of the court below on costs, which combined with the fine, resulted in an overall financial penalty to the Appellant of £20,000, was oppressive and arbitrary. The Appellant is a full-time volunteer for a small charity. The court below should have followed the principles applicable to costs orders in criminal cases, including that costs ought not to exceed the level of any fine imposed.**

C. FACTUAL CONTEXT

12. There was uncontested evidence before the Supreme Court in the Heathrow expansion case that, at the time of the designation of the Airports National Policy Statement in support of expansion ("the ANPS"), the Secretary of State for Transport at the time, the Rt Hon Chris Grayling MP ("the SST"), knew that:

    a. The expansion of Heathrow Airport would lead to around 40,000,000 tonnes of carbon dioxide emissions from UK aviation by 2050;

    b. That in order to meet the goal of limiting warming to 1.5˚C, established by the Paris Agreement on Climate Change ("the Paris Agreement'), carbon dioxide emissions would need to be "net zero" before 2050; and that

    c. Breaching the Temperature Limits prescribed in the goals of the Paris Agreement would have dire implications for humanity, jeopardising our food supply, turning whole regions of the world into death-traps, and crossing critical tipping points in the climate system.

13. In summary, it was clear on the agreed facts before the court, that the expansion of Heathrow Airport would cause the 1.5˚C global temperature limit to be breached, with potentially catastrophic consequences.

14. There was also uncontested evidence before the Supreme Court that the SST had a) failed to communicate these risks to the public, and that he had b) actively misled the public into believing that Heathrow expansion was compatible with international climate obligations (foremost of which is the Paris Agreement) - ie that it was essentially safe.

15. The Government's response to the public consultation on the ANPS, for example, stated:

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

16. That was just not true.

17. It emerged in the course of the trial that the Government had not in fact assessed the ANPS against the Paris temperature limit at all. It had assessed it against the historic, discredited goal of 2˚C, rejected by all Governments in 2015 as exposing humanity to intolerable risks of disaster. The Government's false assurance to the public that Heathrow expansion was compatible with international climate obligations flowed from this basic factual error.

18. At no point did the SST advance any explanation for this error.

19. As the Court of Appeal correctly noted:

> **"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."[1]**

20. The Court of Appeal ruled:

> **"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 ..."[2]**

21. Consequently the Court of Appeal concluded that:

> **"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."[3]**

22. In summary, the SST had misled the public into believing Heathrow expansion was safe, as a result of measuring it against the historic and dangerous global climate limit. Had he measured it against the correct limit he would have been bound to conclude that it exposed the public to intolerable danger. The Court of Appeal ruled the ANPS unlawful.

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[1] Court of Appeal judgement, para. 186
https://www.judiciary.uk/wp-content/uploads/2020/02/Heathrow-judgment-on-planning-issues-27-February-2020.pdf?fbclid=IwAR3OQKZqQ_Wd41jVtcxrBimnVuqWMogMaPXgi1JYWrAA6XCF3lqhZL1uowQ
[2] *Ibid.* para. 212
[3] *Ibid*. para. 283

23. The Government did not appeal the Court of Appeal's ruling (the appeal to the Supreme Court was brought only by Heathrow Airport Limited, one of the Interested Parties to the proceedings).

24. Despite the fact it was the pleaded position of the SST that he did not take the Paris Agreement into account, and that he had instead relied on the historic 2˚C temperature limit, the Supreme Court ruled:

> **"the Secretary of State took the Paris Agreement into account"[4]**

25. The Supreme Court offered no explanation as to why it was in a better position than the SST to know whether or not the SST had taken the Paris Agreement into account; nor as to why it was the role of the Supreme Court to reverse a factual issue that had been formally agreed by all parties to the case.

26. The Supreme Court omitted any reference to the evidence, which had been placed before it, to the effect that Heathrow expansion would breach the 1.5˚C threshold, with potentially catastrophic consequences. The Supreme Court did not address the SST's error in relying upon the 2˚C temperature limit as his benchmark.

27. In summary, the judgment of the Supreme Court failed to alert the public to the fact that Heathrow expansion would cause the 1.5˚C temperature limit to be breached with potentially catastrophic consequences for the public.

28. It would have been negligent of the Appellant not to take reasonable and proportionate measures to ensure that the true risks of Heathrow expansion were placed firmly in the public domain. The Appellant's action ensured that the information which had been concealed was properly placed in the public domain.

29. In particular, it was in consequence of the Appellant's action that leading scientists, economist and policy-makers from all continents wrote a letter to the Supreme Court regarding the matter, which was published in the national press:

> *"Dear Lord Reed:*
>
> *We write concerning the Supreme Court's decision last December, which ruled that the Government's policy in support of Heathrow expansion was lawful, despite the Government's failure to take into account the Paris Agreement's agreed temperature limits which constitute a key part of its architecture.*
>
> *There was uncontested evidence before the Court that:*
>
> - *The expansion of Heathrow Airport would lead to around 40,000,000 tonnes of carbon dioxide emissions from UK aviation by 2050;*

[4] Supreme Court judgment, para. 125, https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf

● That in order to meet the Paris Temperature Limit (ie 1.5˚C and "well below" 2˚C), carbon dioxide emissions would need to be "net zero" before 2050; and that

● Breaching the Temperature Limits prescribed in the goals of the Paris Agreement would have dire implications for humanity, in particular for the younger generation and the Global South.

The Government did not explain how the expansion of Heathrow Airport could be reconciled with the goals agreed in Paris by every country in the world. To the contrary, it argued that the Paris Agreement was "not relevant". Chris Grayling MP, the Transport Minister at the time, relied instead on the historic 2˚C temperature limit, rejected by governments (including the UK Government) in December 2015. The Court of Appeal ruled that approach unlawful, on the basis that it was the Government's own policy to uphold the Paris Agreement - including its globally agreed temperature limits which are based on impeccable science:

> ***"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."***

Reversing the Court of Appeal's decision, the Supreme Court held that the Paris goals could not be regarded as Government policy (despite the fact that the Government itself had accepted the Court of Appeal's ruling). Consequently, the Court held that there was no requirement on the Government to take the Paris goals set out in Article 2 into account.

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.

Yours sincerely"[5]

30. The letter is signed by, among many others, Sir David King, the Government's former Chief Scientific Adviser, Professor Jeffrey Sachs, former Special Adviser to the UN Secretary General and Caroline Lucas, MP for Brighton, Pavilion.

D. GROUND 1 - THE COURT BELOW WRONGLY DISREGARDED THE RESPONDENT'S DEFENCE

31. The Appellant's opening submission began as follows:

> **"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."**

32. The Appellant invoked the *dicta* of Lord Bingham in the case of *Shayler*:

> **"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."**

[5] For the letter, with full list of signatories, see here: https://planb.earth/wp-content/uploads/2021/03/Supreme-Court-Expert-Letter.pdf

33. He cited the *Public Interest Disclosure Act 1998, section 43B*, which though not directly applicable to the circumstances of the case, in nevertheless indicative of public policy in relation to acts of disclosure:

> **"Disclosures qualifying for protection.**
>
> **(1)In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—**
>
> **(a)that a criminal offence has been committed, is being committed or is likely to be committed,**
>
> **(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,**
>
> **(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,**
>
> **(d)that the health or safety of any individual has been, is being or is likely to be endangered,**
>
> **(e)that the environment has been, is being or is likely to be damaged, or**
>
> **(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed."** (emphasis added)

34. It was, in other words, at the heart of the Appellant's case, that evidence regarding the extreme danger of Heathrow expansion had been suppressed, and that the publicity generated by the Appellant's disclosure was a proportionate antidote to that suppression.

35. The Appellant's objective of getting accurate information into the public domain succeeded. The following critical facts are now in the public domain:

    a. At the time of designating the ANPS, the Government was aware that Heathrow expansion would breach the 1.5˚C temperature limit;

    b. It failed to communicate that to the public.

    c. For the purposes of the ANPS the benchmark applied by the Government was the discredited 2˚C limit.

36. The Respondent has made no attempt to challenge the facts set out at para 31 above. He has been right not to do so. Each proposition is confirmed by the documentary record.

37. As acknowledged by the Respondent, the Appellant's disclosure was protected by ECHR Article 10, the right to freedom of expression.

38. The Supreme Court has recently considered the application of Article 10 to the context of acts of protest in the case of *Ziegler and others*.[6] Recognising that prosecution is an interference on the basis of a public statement is an interference with Article 10, the Court stated:

> **"Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case."[7]**

39. The court below's failure to consider the Appellant's case, ie that his disclosure was a response to the concealment of evidence regarding the dangers of Heathrow expansion, was a violation of this principle.

40. More straightforwardly, the failure of the court below to engage with the Appellant's defence was a violation of ECHR Article 6: the right to a fair trial implies at a minimum that a court addresses the defence advanced by the defendant to a criminal trial.

E. GROUND 2 - THE COURT BELOW WRONGLY DISREGARDED THE LETTER SENT IN SUPPORT OF THE APPELLANT'S POSITION BY LEADING SCIENTISTS AND ECONOMISTS

41. The letter sent to the Supreme Court by leading scientists and economists, set out at para 29 above, was central to the Appellant's defence. It supported the Appellant's position on the following matters:

    a. The facts concerning the relationship between Heathrow expansion and the Paris Agreement temperature limit (which the authors refer to as *"Humanity's Lifeline"*)

    b. The consequences of legitimising breach of that limit

    c. The reasonableness of sounding the alarm regarding the Supreme Court's approach

    d. The efficacy of sounding the alarm in the way that the Appellant did (ie the letter demonstrated that the alarm had been heard).

42. Further, the letter, and the support expressed for the Appellant by so many leading authorities, was relevant to the issues of sentence and costs.

43. The Supreme Court was wrong to disregard this letter and wrong to make no reference to it in any part of its judgement.

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[6] https://www.supremecourt.uk/cases/docs/uksc-2019-0106-judgment.pdf
[7] *Ibid.* para. 59, per Lord Hamblen and Lord Stephens

F. GROUND 3 - THE COURT BELOW WAS NOT AN IMPARTIAL TRIBUNAL, CONTRARY TO ECHR ARTICLE 6

44. ECHR Article 6(1) states:

> **"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 …"** (emphasis added)

45. The court below was not an independent and impartial tribunal in this matter. The Appellant's position is that the court below had omitted critical evidence from its judgment regarding the dangers of Heathrow expansion. The Registrar of the Supreme Court wrote the letter of complaint to the Attorney General on 17 December 2020.

46. That letter stated:

> **"In light of these events, Lord Reed has decided that the court should refer the matter to the Attorney General so that she can consider whether proceedings should be taken against Mr Crosland for contempt of court. Lord Reed also intends to make a complaint about Mr Crosland's conduct to the Bar Standard Board, so that it can consider whether disciplinary action should be taken."**

47. A complaint was also filed with the Charity Commission against Plan B.Earth.

48. The Appellant wrote to the Charity Commission regarding the identity of the complainant to the Charity Commission. The Charity Commission informed him his query had been referred to its Freedom of Information team. On 28 April 2021the Appellant wrote to the Charity Commission to say:

> **"If you wouldn't mind letting the FOI team that the real issue is whether the complainant was the Supreme Court. If so, it may be relevant to my trial before the Supreme Court on 10 May: ie, if the Supreme Court was the complainant is it also a fair and impartial tribunal, as required by ECHR Article 6?"**

49. The Charity Commission, however, declined to confirm or deny whether the complaint in this instance was the Supreme Court.

50. In any event, in light of the known complaints against the Appellant made by the Supreme Court, and the nature of the Appellant's defence, there was an obvious compromise to the independence and the impartiality of the trial court. It was, at a minimum, incumbent upon the court below to acknowledge this position, so that it could be mitigated as far as possible.

51. In applying for the proceedings to be live-streamed, in accordance with the Supreme Court's ordinary practice, the Appellant made the following observation:

> **"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 …"**

52. Far from acknowledging the compromise to impartiality, on 19 April 2021, the court below, issued a court order which attempted to dispute the existence of any such compromise:

> **"Contrary to the submission of the respondent, the applicant in these proceedings is the Attorney General and not the Supreme Court. It is the Attorney General who is bringing these proceedings and who made the decision to do so …"**

53. The Appellant was aware that the Supreme Court was not the applicant. His point was simply that the Supreme Court was the original complainant - a fact confirmed by the affidavit for the Respondent.

54. Further, the Supreme Court adopted various measures which reinforced the perception the perception of bias, including the following:

    a. Bilateral communication with the Attorney-General concerning these proceedings, contrary to the principle that all parties should be copied into such correspondence;

    b. Delivering a pre-prepared written judgement immediately following the submissions of the Appellant, such that it as apparent that the judgement had been written prior to hearing the submissions of the Appellant;

    c. Announcing fundamental changes to the procedure to be followed by the court on the afternoon of Friday 7 May afternoon, just half a working day ahead of the hearing on Monday 10 May;

    d. A pick-and-mix approach to the procedures, such that for the purposes of the Appellant's application for the live-streaming of proceedings, it declined the application on the basis that the proceedings were criminal, but for the purpose of the Respondent's costs application, it disregarded the Practice Direction applicable to costs orders in criminal cases;

    e. Breaching the confidentiality of the Appellant and the Appellant's children, without warning or explanation, by publishing sensitive material relating to the financial interests of the Appellant's children, which the Appellant had disclosed to the Court in confidence out of a duty of candour to the court concerning the matter of costs.

55. Individually and cumulatively, these matters constituted a violation of the Appellant's right to a fair trial, which is protected by ECHR Article 6.

G. GROUND 4 - THE RESPONDENT BREACHED HIS OBLIGATIONS UNDER CPIA BY FAILING TO DISCLOSE TO THE APPELLANT EVIDENCE OF THE GOVERNMENT'S BREACH OF A COURT EMBARGO IN JULY 2020

56. Robert Earl submitted an affidavit on behalf of the Respondent which indicated that the decision to prosecute the Appellant flowed in part from previous breaches of court embargos:

> **"The Applicant has considered carefully whether it is in the public interest to bring these proceedings and has concluded that they are necessary to uphold the due administration of justice. In particular, the Applicant has taken into account the powerful public interest in the courts being able to circulate draft judgments confidentially among the parties … Indeed it is of such significance that the Applicant had cause to issue a media advisory notice in October 2020 drawing attention to the importance of observing this confidentiality."[8]**

57. The Respondent placed the media advisory notice before the court below at the hearing on 10 May.

58. Further, in his outline submissions the Respondent stated:

> **"... the premature leaking of draft judgement appears to be growing in prevalence and is a matter of serious concern. The Applicant had cause to issue a media advisory notice about this in October 2020 …"**

59. It would have assisted the Appellant to know that in July 2020, in the context of the high profile case concerning Shamima Begum, the Government's "serious concern" over the breaching of embargoed court judgements was less apparent.

60. The BBC Report into the breach of the embargo in that case reads as follows:

> **"Separately, the court has revealed that the Sun newspaper will be referred to the Attorney General after it obtained a copy of the Court of Appeal's draft judgement - or its "essential contents" - in advance of it being handed down on 16 July …**
>
> **Lady Justice King, the head of the panel of three judges, said they were referring the newspaper to the Attorney General because of a potential contempt of court in publishing a story about the judgement - <u>seemingly leaked from government</u> - before it was announced in court …**

[8] Affidavit of Robert Earl, para. 20

> **Sir Jonathan Jones, the head of the government legal department, is now under pressure to identify who leaked it and report that finding back to the judges. There will only be a handful of people inside the Home Office or elsewhere in Whitehall who knew the outcome.**
>
> **<u>But there is also pressure for Attorney General Suella Braverman</u>. She is simultaneously legally responsible for any decisions to pursue newspapers for contempt of court - and a cabinet minister.**
>
> **And that means her decision on this matter will face the utmost scrutiny."**[9] (emphasis added)

61. It does not appear the Government pursued its leak inquiry. Sir Jonathan Jones resigned in September 2020. In March of this year Sir Jonathan Jones tweeted:

> **"This government has an ambiguous attitude to the law. It wants the full "force of the law" to apply to everyone else (immigrants, covid rule-breakers, protesters ...), but not necessarily to itself."**[10]

62. There was an obligation on the Respondent, pursuant to both ECHR Article 6 and the Criminal Procedure Investigations Act 1996, section 3 (not to mention the Respondent's own guidelines on disclosure) to disclose to the Appellant material which might have a) assisted the Appellant's case; or b) undermined the case for the Respondent.

63. Exposing the hypocrisy of the Government's "concern" was capable of assisting both the court below and the Appellant in the fair resolution of this matter, and it was disingenuous of the Respondent to refer to his concern without reference to the events in the Shamima Begum case.

64. As it was, it was left to one of the journalists attending court on 10 May to alert the Appellant to what had occurred. The consequence was that the Appellant, when he should have been addressing the court below on costs, was reading about this matter on his phone for the first time, so that he could raise it with the court.

65. It was wrong that it was left to a journalist to alert the Appellant to this matter and wrong that the Appellant was not given a proper opportunity to consider the implications of this evidence.

<u>H. GROUND 5 - THE COURT'S RULING ON COSTS WAS OPPRESSIVE AND ARBITRARY</u>

66. In 2015, the Appellant was still employed by the Government. Working alongside the Foreign & Commonwealth Office (as it was at the time), he visited Nigeria to assist the Nigerian Government with the development of legislation around national and

[9] https://www.bbc.co.uk/news/uk-53607595
[10] https://twitter.com/SirJJQC/status/1368531955843731461

international security. In the course of this visit, the Office of National Security in Nigeria explained to the Appellant how Lake Chad, the primary freshwater resource for 20 million people, had lost 80% of its volume, largely as a result of the climate crisis, driving insecurity in the region and more widely.

67. Partly in consequence of this experience, and because he considered that by this stage he had made sufficient financial provision for his children, the Appellant left the Government in 2015 to establish Plan B. Earth, a small volunteer-based charity focussed on the climate crisis. The Appellant has been an unpaid volunteer since that time.

68. The Respondent does not dispute that the Appellant's act was motivated by concern for his children and for the public and it was acknowledged by the court below that his action did not cause any substantial harm.

69. An overall financial penalty of £20,000, imposed upon a full-time charity volunteer, was disproportionate, arbitrary and oppressive. A penalty on this scale appears calculated to cause the Appellant and his family substantial, long-term hardship.

70. There is no fixed procedure for a contempt of court case before the Supreme Court. The court below had, however, clearly indicated to the Appellant that criminal procedures (as opposed to Civil Procedure Rules) were being applied to the case.

71. On 18 March 2021, for example, the Respondent had emailed the Court as follows:

> "**Assuming the trial takes place in court (as opposed to online) COVID restrictions will limit the number of people who can safely attend in person, potentially leading to those attending being turned away.**
>
> **In any event it may be difficult or impractical for some of those who wish to follow proceedings to attend Court in person. As I understand it, it is standard practice for the Supreme Court to live-stream its proceedings, so the issue may not be contentious.**
>
> **Were there to be any dispute about the appropriateness of live-streaming these proceedings, that would, in my submission, be a matter to address as a preliminary issue.**
>
> **One other preliminary matter. As I understand it, the ordinary procedure for a criminal trial is:**
>
> **1. Prosecution case**
>
> **2. Defence case**
>
> **3. Prosecution closing speech**
>
> **4. Defence closing speech.**

That may be unwieldy to the circumstances of this case, but the key principle, in my submission, is that a person at risk of criminal conviction should be afforded the last word. Were there to be any dispute about that, that might also need to be addressed as a preliminary matter."

72. On 26 March 2021, the Court Registrar replied on behalf of the court below as follows:

> **"2. As for live streaming, <u>criminal trials</u> are not live streamed and the Justices have decided this practice should be followed in this case. The criteria of a public hearing are met without live streaming.**
>
> **3. As for the procedure at the hearing the sequential procedure will be as you have outlined."** (emphasis added)

73. Consequently, it was at all material times the Respondent's understanding and legitimate expectation that any application on behalf of the Applicant for a costs order would be subject to the ordinary principles applicable to the context of criminal trials. He had been given no indication to the contrary.

74. The *Practice Direction (Costs In Criminal Proceedings) 2015 [2015] EWCA Crim 1568 Consolidated With Amendment No. 1 [2016] EWCA Crim 98* establishes the following principles for costs orders against a defendant in criminal proceedings:

> **"The court may make such order payable to the prosecutor as it considers just and reasonable" (§3.1)**
>
> **"<u>An order should be made where the court is satisfied that the defendant or appellant has the means and the ability to pay</u> ... An order should not be made on the assumption that a third party might pay" (§3.4)**
>
> **"The prosecution should serve upon the defence, at the earliest time, full details of its costs so as to give the defendant a proper opportunity to make representations upon them if appropriate … There is no provision for assessment of prosecution costs in a criminal case, such disputes have to be resolved by the court, which must specify the amount to be paid" (§3.6)**
>
> **"<u>The Divisional Court has held that there is a requirement that any sum ordered to be paid by way of costs should not ordinarily be greatly at variance with any fine imposed</u>."** (§3.7) (emphasis added)

75. The Respondent failed to serve upon the Appellant details of his costs ahead of the trial, so that on 10 May the Appellant had no information as to the level of costs being sought.

76. The court below appears to have reversed the order it made in open court on the basis of the *Practice Direction* (ie by subsequently specifying the amount to be paid). Yet it ignored the guidance that *"costs should not ordinarily be greatly at variance with any fine imposed"*, imposing costs that were three times greater than the fine.

77. Such an approach was oppressive and arbitrary. The Appellant had no way of predicting in advance that this was the approach the court below would adopt.

78. Had he been aware that this was the approach to be adopted, the Appellant would have been under economic pressure to plead guilty, simply because he could not afford to pay the costs of a full trial.

79. Such economic pressure in the context of proceedings which are essentially criminal, and where liberty is at risk, is fundamentally wrong.

80. Initially the court below ordered the Appellant to pay the costs of £15,000 by 12 July. When the Appellant explained he had no means finding a sum on this scale by 12 July and requested an extension of time of 6 months to make the payment, the court below varied the time for payment to 31 July.

81. The court below can not have been satisfied that the Appellant has the means to meet such an order because there was no evidence that the Appellant has the means to pay such an order and, as a matter of fact, the Appellant does not have the means to pay such an order. The court below appears to be setting the Appellant up to fail. It would have been more honest to impose a custodial sentence directly.

82. The Appellant applies for the suspension of this order, pending the outcome of his appeal.

I. CONCLUSION

83. The Supreme Court was the complainant in this case. The Supreme Court was the first instance tribunal. The Supreme Court is the appeal court. Recognising the challenge that such circumstances present, the Appellant must nevertheless exhaust domestic remedies if he is to take the matter any further.

TIM CROSLAND
THE APPELLANT
16 JULY 2021