IN THE SUPREME COURT OF THE UNITED KINGDOM

UKSC 2021/0160

On appeal from the Supreme Court sitting as a court of first instance
[2021] UKSC 15; [2021] 4 WLR 143

TIM CROSLAND

Appellant

-v-

HER MAJESTY'S ATTORNEY GENERAL

Respondent

APPELLANT'S SUBMISSIONS ON COSTS

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A. INTRODUCTION

1. The Attorney General seeks a further £21,657.45 costs against me in this case (substantially more than she was awarded for the full committal application before the Supreme Court) . Mr Eardley, junior Counsel, whose agreed hourly rate for the original committal application to the Supreme Court was £120, claims a brief fee of £4,800 for a two hour hearing in which he spoke for less than half an hour, primarily to revisit the same points he made at the original trial (other than on the jurisdictional issue, which he lost). He claims in addition to that brief fee, £3730 for case preparation. At £120 p/h,

Counsel's fees for the appeal of £8530 imply more than 70 hours work. Contrary to rC8 of the BSB Handbook, there is no integrity to such a claim.

2. Were the application to be granted, it would bring the cumulative costs order against me to £36,657.45, more than seven times greater than the £5,000 fine - a total financial penalty of £41,657.45.

3. Relevant matters for assessing the proportionality and justice of such an outcome include the following:

    a. The facts of the case were straightforward and agreed. I was at all times open and honest regarding my action and the motivation for it (indeed I self-reported it, both to the Court and the Bar Standards Board), such that there was no need for either the Attorney General or the court to investigate the facts.

    b. This was an act of conscience. Neither the Attorney General nor the Supreme Court disputed that my motivation in breaching the embargo was to shine a spotlight on the suppression of evidence that Heathrow expansion would cause the 1.5˚C temperature limit to be breached, exposing the public to extreme danger (a motivation corroborated by numerous leading scientists, lawyers and economists).

    c. The Attorney General concedes that my action did not cause any substantive harm. I was careful to minimise the inconvenience, by disclosing only the outcome not the judgment, and by doing so shortly before it would be public knowledge in any event.

    d. I self-represented in this matter, avoiding the costs to the public purse that would have been incurred had I acted on the Attorney General's promptings to apply for Legal Aid.

    e. I am a full-time volunteer for a small charity without the means to pay even the £15,000 that is already ordered against me.

4. The intention behind the Attorney General's application appears to be oppressive - consistent with the Government's approach to all those who shine a spotlight on its endemic dishonesty, corruption and disregard for the law.

5. To the contrary, the Court should make no order for costs in relation to the appeal. That is for the following reasons:

    a. The only new argument, not previously addressed at the first instance hearing, which demanded additional legal research and fresh preparation, was the Attorney General's proposition that I had no right of appeal. The greater part of the court's judgment concerned this novel issue of constitutional law. By a majority of 4 to 1, the Court ruled <u>against</u> the Attorney General on this issue.

b. As the Attorney General recognises, it is the cumulative impact of the fine and combined costs orders that must be considered in determining whether the overall interference with ECHR Article 10 right is both necessary and proportionate (i.e. no greater than necessary to serve a pressing social need, which justifies the interference with that right). In the circumstances of this case, a cumulative financial penalty in excess of £20,000 would be neither necessary nor proportionate.

c. There is a long-standing principle, recognised by the British courts, that in cases concerning civil disobedience and acts of conscience, the authorities will respond with moderation and restraint. A total financial penalty in excess of £20,000, in the context of this case, would violate that principle of restraint.

d. The Attorney General has obviously and cynically inflated her costs bill in the expectation of a favourable process of summary assessment. She should not be rewarded for doing so.

e. I can not afford to pay the £15,000 costs already ordered, let alone more than that. In reality I will only be able to discharge even the existing costs order if a third party agrees to bail me out. The exercise of a right to appeal, in what is essentially a criminal prosecution, should not be confined to those sufficiently wealthy to pay the Attorney General's and Mr Eardley's exorbitant costs.

B. THE APPLICABLE LEGAL PRINCIPLES

B.1 The ordinary position on costs in contempt cases

6. In *On Contempt* (3-96), Arlidge, Eady and Smith state :

> **"It is submitted that, while it is obvious that much of the contempt procedure is sui generis, <u>it would be wrong to minimise the criminal characteristics</u> and consequences of any conduct which is held to be contempt of court…"** (emphasis added)

7. More specifically, in relation to costs in contempt proceedings, they say at 14-54:

> **"The court will naturally take into account such facts as will ordinarily weigh in the consideration of such matters; for example, if the contemnor had no sufficient income or other resources to justify making an order …"**

B.2 The ordinary position on costs in criminal cases

8. Even if not directly applicable, if "*it would be wrong to minimise the criminal characteristics*" of contempt hearings, the principles applicable to costs in criminal cases should serve at least as a point of reference (as the Court seems partially to have accepted). Those principles are summarised below.

9. In *Whalley* (1972) 56 Cr. App. R. 304, the Court stated:

> **"This Court takes the view that whenever a court is imposing a financial penalty, or making an order in regard to costs, it must have regard to the means of the individual against whom the order is going to be made … It would be quite wrong to impose a very small fine and a very heavy order for costs; the two must go in step."** (emphasis added)

10. In *Hayden* (1975) 60 Cr. App. R. 304. Lord Widgery stated:

> **"As a matter of principle it would be clearly wrong to penalise a man, that is to say increase the punishment suffered by a man, merely because he has taken advantage of his constitutional right of trial by jury … When one comes to the question of costs, again the award of costs should not be used as a means of punishing the defendant for having elected to go to trial. It would be quite foreign to the true practice of awarding costs to use them as an additional form of penalty."**

11. In *R v Nottingham Justice, ex p. Fohmann* (1987) 84 Cr. App. R. 316, the court ruled (at p. 319):

> **"The costs and fine should be kept in step and the order as made should be within the means of the person so ordered".**

12. In *Jones* (1988) 10 Cr. App. R. (S.) 95, Turner J said (at p. 96):

> **"The two orders for fine and for costs ought within reasonable limits to go step by step with each other."**

13. These cases were cited with approval by Lord Bingham C.J. in *R v Northallerton Magistrates' Court, ex p. Dove* [2000] 1 Cr. App. R(S) 136, who summarised the propositions in relation to costs as follows:

> **"(1) An order to pay costs to the prosecutor should never exceed the sum which, having regard to the defendant's means and any other financial order imposed upon him, the defendant is able to pay and which it is reasonable to order the defendant to pay …**
>
> **(4) … the costs order to be paid should not in the ordinary way be grossly disproportionate to the fine …"**

14. These principles are now reflected in the Practice Direction (Costs In Criminal Proceedings) 2015 [2015] EWCA Crim 1568 Consolidated With Amendment No. 1 [2016] EWCA Crim 98, which states:

> **"An order should be made where the court is satisfied that the defendant or appellant has the means and the ability to pay ... 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)**
>
> **“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.” (§3.7)**

B.3 Constraints upon the ordinary position

15. The Court, without accepting the application of principles applicable to costs orders in criminal proceedings, seems to have acknowledged they might be a potentially relevant consideration, concluding that:

> **“no contradiction by the First Instance Panel of what was said by Lord Bingham in R v Northallerton Magistrates’ Court, Ex p Dove (or the relevant Practice Direction). This is because Lord Bingham had made clear, at p 142, that he was talking about “the ordinary way””**

16. However, there are two compelling legal reasons why, in this case, any departure from the “ordinary way” should be resolved in my favour and not to my disadvantage.

B.3.1 - protection of ECHR Article 10

17. First, my action which aimed to address the suppression of evidence concerning the extreme danger of Heathrow expansion, falls within the scope of ECHR Article 10.
18. The relevance of that protection in the context of lawyers breaching their obligations to the court has twice been considered by the European Court of Human Rights (**“ECtHR”**).
19. In *Mor v. France* 28198/09, the ECtHR considered a case in which a lawyer had broken the confidentiality of the court to speak publicly about matters of public health. The French Court found her guilty of breach of professional confidence and fined her €1 (one euro).
20. The European Court of Human Rights concluded, unanimously, that:

> **“... the interference complained of had not responded to a pressing social need and had been disproportionate in the circumstances of the case.”**

21. In *Kyprianou v. Cyprus*, 73797/01 [2005] ECHR 873, where a lawyer was found guilty of contempt of court by the domestic court, and sentenced to 5 days imprisonment, the ECtHR held as follows:

"... the Assize Court failed to strike the right balance between the need to protect the authority of the judiciary and the need to protect the applicant's right to freedom of expression. The fact that the applicant only served part of the prison sentence ... does not alter that conclusion." [182]

"The Court accordingly holds that Article 10 of the Convention has been breached by reason of the disproportionate sentence imposed on the applicant." [183]

B.3.2 - principle of restraint in relation to acts of conscience

22. Second, it is accepted by both the Attorney General and the Court that my act was an act of conscience. It is a well established principle of the common law that the courts should exercise particular restraint in relation to acts of conscience.

23. In *R v Jones (Margaret)* [2006] UKHL 16, Lord Hoffman said at para. 89:

"My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account. The conditional discharges ordered by the magistrates in the cases which came before them exemplifies their sensitivity to these conventions."

C. MY FINANCIAL MEANS

24. In the absence of any indication to the contrary, I have been guided by three considerations in relation to information concerning my financial means:

    a. The overriding objective, as set out in the Civil Procedure Rules, 1.1, which implies *"dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues"*;

    b. Common law guidance, which says:

        "... **whenever a court is imposing a financial penalty or making an order in regard to costs, it must have regard to the means of the individual against whom the order is going to be made. That does**

not necessarily mean that a very detailed examination of all his finances has to be entered into by the court. There is a form which has to be filled in for the purposes of the grant of legal aid which deals with all the man's finances in very considerable detail. It is not, as we think, necessary to send for that form or to go through all those details at the trial. In the ordinary case a court can make a reasonable assessment of the sort of sum that a man is able to pay …"[1]

c. The legal obligation to safeguard the privacy of third parties, with whom my financial circumstances are connected.

25. There has been no substantial change to my financial circumstances since I provided detailed confidential financial information to the court of first instance, setting out not only my financial position but that of others in my family, which related to my own position.

26. Without warming, the court of first instance published significant parts of this confidential information, including information concerning my children. That publication breached my children's rights to privacy and I communicated that to the court.

27. Subsequently the court removed part of this information from the judgment, but without the ordinary courtesy of either informing the parties that it had done so, or explaining why it had felt it necessary to include the information in the first place.

28. The Supreme Court now highlights the confidential information which it removed from the judgment, by placing it on the face of the Supreme Court website, drawing further attention to it. It accompanies reference to the deleted material with the following the false statement:

> **"Please Note: [redacted] in para 23, line 6 have been deleted for consistency with the contents of the Order"**

29. It is not true that words were deleted *"for consistency with the contents of the Order"***.** There was no Order relating to the issue. The words were deleted, presumably, because the Supreme Court recognised it was wrong to publish confidential financial information concerning my children.

30. It is notable that in *RSPB, Friends of the Earth & Client Earth v. Secretary of State for Justice* [2017] EWHC 2309 (Admin), concerning the provision of financial information relating to cost orders in environmental cases, the aptly named Mr Justice Dove highlighted the need for procedures to ensure confidentiality concerning such information:

> **"To summarise my conclusions on Ground 2, I am satisfied that if a dispute in relation to the appropriate level of costs caps were to proceed to a**

[1] *Whalley*, at page 305

hearing (as opposed to being dealt with on the papers at a time when the claimant's financial information would remain confidential) then the rules should provide for that hearing to be in private in the first instance." (emphasis added)

31. My financial position is inextricably linked with that of third parties, who are entitled to privacy in relation to their financial circumstances.

32. In these further submissions, I will, so far as possible, avoid reference to the financial position of any third parties in order to safeguard their privacy.

33. I have a half-share in the family home, which was purchased more than 20 years ago for around £300,000. It is now worth substantially more than that. However, it is not a disposable asset, because it is the family home; and in any event, I could not dispose of it without the consent of the co-owner.

34. I left the Government Legal Department in 2015 on a voluntary early exit package. Having made what I considered to be sufficient financial provision for my children, I took the decision in 2016 to work as a full time volunteer for Plan B, the charity I established to hold the Government to account for its commitment to the Paris Agreement. I took that decision for three principal reasons:

    a. I wished it to be apparent that I had no conceivable "ulterior motive" for the work that I was doing;

    b. Plan B's trustees wished to avoid the "funding trap", whereby organisations have their strings pulled by funders they depend upon for salaries and pensions;

    c. I aim to live as low consuming and low polluting a lifestyle as possible.

35. Lady Arden states that:

    "it is up to the defendant to provide satisfactory evidence of his lack of means."[2]

36. She does not say where this principle comes from, nor does she explain how such a burden is to be discharged.

37. If the court considered it necessary and proportionate for me to provide documentary evidence concerning my financial position then it should have said so. As it stands, it has simply asked me to summarise my financial position, which I have done previously, and which I explain in further detail below.

38. Plan B's accounts are published openly on the Charity Commission website:

    https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/5076224/accounts-and-annual-returns

[2] Para. 152

39. It will be apparent from these accounts, which cover the past five years, that I receive no remuneration from Plan B.

40. Any of Plan B's 9 other trustees could confirm that I work full-time for Plan B as a volunteer. If the Court would be assisted by such a letter, it need only say.

41. My total income for the tax year ending April 2021 was £10,803.54. This derived principally from the management of two properties (the equitable interest in which belongs to others). This was more than in the previous tax year (which formed the basis of my previous submissions) because the maintenance costs for the properties were less high this year.

42. I have organised my life to be as low consuming as possible. I installed solar panels some years ago to reduce household bills and emissions. Although I do not earn a salary, I work in the "skills exchange" economy. For example, I provide informal legal advice to people I know, who offer their own skills and experience to me in return. A friend, who was previously an organic farmer, lives in one of the properties I manage at a below market rate. He supports us to grow food locally. We collect manure free of charge from a local riding school, which substantially enhances the productivity of the available land. I have family in Slovenia, who I visit in the summer. For the period that the family home is vacant, a friend who is a builder comes and stays. In return, he helps with the maintenance of the property.

43. By such measures, I am able to live relatively sustainably on a modest income.

44. I estimate my monthly expenses (ie the costs for which I assume specific responsibility) to be approximately:

    a. Food - £500 pcm

    b. Utility bills - £150 pcm

    c. Council Tax - £150 pcm

    d. Costs of my son's football training (ie club, kit and travel costs) - £100 pcm

    e. Contribution to my daughter's costs of living at University - £300

    f. Costs of cat inherited from neighbour (inc vet bills) - £50 pcm

    g. Dentist / optician costs - £50 pcm

    h. Phone / wifi costs - £60 pcm

    i. Maintenance of house - £50 pcm

    j. Travel - £50 pcm

    k. Books, magazines, film subscriptions - £50 pcm

l. Donation to Compassion in World Farming - £20 pcm

m. Donation to Greater London Charity for the Blind - £10 pcm

n. Donation to Dog's Trust - £10 pcm

o. Donation to Wikipedia - £5 pcm

p. Miscellaneous costs - £200 pcm

45. My expenses exceed my monthly income and I am currently more than £1000 overdrawn.

46. I am an open and honest person, who is also mindful of the privacy of others. Neither the Attorney General nor the Court have offered any guidance on the level of detail expected in these circumstances, nor the form in which it should be provided, nor clarity on the procedures to be adopted to ensure the privacy of third parties is respected.

47. I infer from the costs order previously made and upheld, that the Court either disregards or disbelieves what I have said concerning my financial position. If the Court considers that the information I have provided (here and previously) is insufficient, I would be grateful for guidance on what more is required.

D. THE COSTS INCURRED

D.1 The Attorney-General's costs

48. Remarkably, the Attorney General claims to have incurred almost the same costs on appeal (£21,657) as she did in preparing the claim for the original full trial before the Supreme Court (£22,504). Remarkable, because of the brevity of the appeal hearing. Remarkable, because on appeal the Attorney General had only to respond to my grounds of appeal. Remarkable, because the only substantially new issue arising on appeal, demanding new research and analysis, was the jurisdictional issue on which she lost.

49. More remarkable still, Mr Eardley's costs have sky-rocketed on appeal. His claimed costs at first instance, which included preparing the application for contempt and a full day's trial before the Supreme Court, were £5820. His claimed costs for the appeal are £8530.

50. As a point of comparison, Mr Eardley's total costs for the full day's hearing before the Supreme Court at first instance, were £2,280 (£1560 preparation costs plus £720 for his attendance at Court). Whereas his claimed brief fee for the two hour-hearing before the appeal court, at which he spoke for no more than half an hour, is £4800 (in addition to £3730 for other aspects of appeal preparation).

51. It is difficult to comprehend this level of cost inflation, when one considers that most of the issues had already been rehearsed and researched at first instance. In the natural

way of things, the appeal should have involved substantially less preparation than did the first instance hearing - not more. The point is all more forceful given that the Attorney General's position was that my Grounds of Appeal did not raise any substantial issues of law.

52. Neither the Bill of Costs nor Mr Eardley's submissions advance explanation for the differential between Mr Eardley's costs at first instance and his costs on appeal.

53. rC22 of the BSB Handbook states:

> **"Where you first accept instructions to act in a matter:**
>
> **.1 you must, subject to Rule rC23, confirm in writing acceptance of the instructions and the terms and/or basis on which you will be acting, <u>including the basis of charging</u> …"** (emphasis added)

54. rC88 of the BSB handbook states:

> **"You must:**
>
> **.1 ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:**
>
> **.a your fees have been paid; and**
>
> **.b any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;**
>
> **.2 provide your client with such records or details of the work you have done as may reasonably be required for the purposes of verifying your charges."**

55. If Mr Eardley was continuing to act at £120 p/h on appeal, his claimed fee of £8530 implies more than 70 hours work on his part. But it is not plausible that Mr Eardley committed more than 70 hours to this appeal.

56. If, however, a decision were taken to raise Mr Eardley's hourly rate from £120p/h mid proceedings, that has not been communicated to the parties or to the Court, nor has any explanation for such a raise been offered.

57. In the absence of any explanation for the extraordinary rise in Mr Eardley's levels of remuneration, it may be inferred that the claimed costs have been inflated to exploit the process of summary assessment.

58. Nor does the only other plausible explanation for the increase in costs assist the Attorney General. The five grounds of appeal (1. the article 10 point; 2. the expert letter ground; 3. the impartial tribunal issue; 4. the Shamima Begum embargo breach; 5. the

costs issue) had all been raised during first instance proceedings. The only new issue arising, demanding new preparation and research was the jurisdictional issue. But the Attorney General lost on that point and it would be wrong to make me pay her costs on an issue she raised and lost.

59. The Attorney General now seeks to underplay the significance of the issue:

> **"It is right to acknowledge that the Court rejected the Respondent's submission that it had no jurisdiction to hear the appeal. However, the Court accepted that the point was properly raised and it occupied only a small amount of the parties' time (8 paragraphs in the Respondent's Case, none at all in the Appellant's Case, and some brief oral argument). Therefore, this is not a case where it would be appropriate to make an issue-based costs order, or to hold that the Respondent is only entitled to a percentage of her costs."**

60. That is a disingenuous submission. I did not address the jurisdictional issue in my case because:

    a. The Attorney General had not formally raised the matter in her Form 3 response to my Grounds of Appeal; and

    b. I had not yet seen *her* case, in which she substantiated her argument.

61. My oral submissions were necessarily "brief" because of the short time-frame allocated to the appeal hearing (a total of 2 hours). The time spent on dealing with the jurisdictional issue reduced the time available to explain my substantive grounds of appeal.

62. Nevertheless, I was conscious that the Attorney General was raising a significant point of constitutional law, which might affect not only my own right to appeal but the rights of others in the future.

63. I took that responsibility seriously. Unlike Mr Eardley, I have no prior expertise in the law of contempt. I undertook detailed research, carefully studying leading authorities such as *R v Bow Street Magistrates' Court, ex p. Pinochet* and *Re Lonrho Plc*. I analysed the provisions of the Administration of Justice Act 1960 and considered the applicable principles of statutory interpretation.

64. To the extent that my submissions to the Court were "brief", such brevity was the product of substantial and conscientious preparation (at least 50% of my research time on the appeal as a whole).

65. The Court ruled in my favour on the point. As indicated by Lady Arden, in doing so, Court has determined a novel point of constitutional significance:

> **"The innovation of the majority is to introduce for the very first time in this court or potentially in the whole of the modern legal system of England and**

Wales the concept of a right to review a decision of a court by way of an ordinary appeal which is horizontal only."[3]

66. The relative importance of the issue in the context of the hearing as a whole may be discerned from the Supreme Court's own judgment. The majority judgment dedicated pages 12-21 to the jurisdictional issue; and pages 21-34 to my five grounds of appeal. Lady Arden dedicated pages 34-48 to the jurisdictional issue, and just pages 48-52 to my five grounds of appeal. In total, 25 pages of the Court's judgment relate specifically to the jurisdictional issue, compared to 17 on my five grounds of appeal.

67. The Attorney General, however, makes no attempt to distinguish between those costs attributable to the jurisdictional issue and those attributable to addressing my grounds of appeal.

68. In all the circumstances it would be fair and reasonable to:

    a. Summarily assess the Attorney General's costs at 50% of the costs ordered in relation to the full hearing (ie £7,500)

    b. Attribute 50% of those costs (ie £3,500) to the jurisdictional issue on which she lost.

D.2 My costs

69. Combining the 70 hours Mr Eardley appears to have committed to the appeal, with the 34 hours claimed by GLD lawyers, means a combined total of 104 hours work on behalf of the Attorney General in relation to the appeal.

70. By contrast, I committed no more than 40 hours to the appeal in total. Most of the substantive issues had already been rehearsed at first instance, with only some modest re-framing required on appeal. A substantial part of that time was allocated to the jurisdictional issue - the only new issue arising on appeal.

71. It is difficult to understand how experienced Counsel and GLD lawyers took longer to respond to the appeal than it took me to bring it, particularly given the cursory nature of their responses.

72. As a litigant-in-person, I performed the functions of both solicitor and Counsel. I prepared the first draft of the Statement of Facts and Issues and prepared the Key Document bundle and the Appendix Bundle (bar the hyper-linking).

73. The overriding objective, as set out in the Civil Procedure Rules, states that:

    "(2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –

    (a) ensuring that the parties are on an equal footing …"

[3] Para. 122

74. The requirement to ensure that the parties are on an equal footing is pertinent to the context of costs. It would be unequal and unfair, in the context of a case in which I was successful on one issue, but not on others, to treat my costs as inconsequent simply because I am a litigant-in-person.

75. I invite the Court to assess my costs in relation to the jurisdictional issue in accordance with the following principles:

    a. Given that the jurisdictional issue was the only substantially new issue on the appeal, and given its constitutional significance, 50% of the costs of the case should be attributed to that issue.

    b. In accordance with the overriding objective, the Court should so far as possible, ensure overall fairness in the assessment of costs, placing the parties on an equal footing.

76. In summary, I invite the Court to assess my costs of dealing with the jurisdictional issue at £3,500.

E. APPLICATION OF THE LEGAL PRINCIPLES TO THE FACTS OF THIS CASE

77. The ordinary principle applicable to a contempt case obliges the Court to ensure any costs order is fair and reasonable in light of my means.

78. The ordinary principle applicable to a criminal case is that a costs order should be proportionate to any fine.

79. Taking a hypothetical case, in which the context of a contempt of court were a cynical or dishonest attempt to undermine the legal process or to gain a commercial advantage, even then the ordinary principle would be that a costs order should be proportionate to that fine and that it should take account of the individual's means.

80. The circumstances of this case, however, must be distinguished from such a case for the following reasons:

    a. First, the relevant act was an act of conscience, and as stated by Lord Hoffman in *R v Jones*, the response to acts of conscience calls for particular judicial moderation and restraint;

    b. Second, the relevant act, which aimed to address misleading information disseminated to the public concerning the consistency of Heathrow expansion with the 1.5˚C temperature limit, falls within the scope of ECHR Article 10, with the consequence that the cumulative effect of any fine and costs order must be no greater than is necessary to meet a pressing social need.

    c. Third, no substantial harm was caused, nor was there any interference with the rights of others.

81. In light of these considerations, any substantial departure from the "normal" position, might be expected to operate in my favour and not to my disadvantage.

82. The Attorney General invites the Court to impose a further costs order of £21,657.45 against me, in addition to the £20,000 financial penalty that already applies. Such a figure would amount to four times my annual income for the last tax year.

83. As set out above, in my submission the Court should adopt the following approach to the determination of the appropriate costs order:

    a. First, to what extent do the Attorney General's costs appear to have been reasonably incurred? In the circumstance of this appeal, any more than 50% of the original costs order of £15,000 awarded for the original application (ie £7,500) would be excessive;

    b. Second, to what extent should those costs be apportioned to the jurisdictional issue? In the absence of any clarity on this from the Attorney General, and on the basis of reasonable inferences from the rise in Counsel's fees, and the Supreme Court's judgment, 50% of the costs should be attributed to the jurisdictional issue (ie £3,750).

    c. Third, to what extent should that sum be offset by my costs incurred in relation to the jurisdictional issue? Bearing in mind the overriding objective to ensure equality of arms between the parties, my costs should be summarily assessed to offset that residual figure in full.

84. If, and only if, the Court rejects that analysis and concludes that an order in favour of the Attorney General might otherwise be properly made, would it need to consider the following two further questions:

    a. Fourth, on the evidence before the Court concerning my means, is the Court satisfied that I can afford to pay more than the £15,000 costs already ordered against me? If the answer is no, it should make no order for costs. The Court should not order me to pay more than I can afford.

    b. Fifth, and only if the Court is satisfied that I can afford to pay more than the £15,000 costs already ordered against me, it should consider whether in the context of an act of conscience, and the Strasbourg authorities on the point, it is necessary and proportionate to a pressing social need to impose on me a financial penalty in excess of the £20,000 already imposed.

F. CONCLUSION

85. The Attorney General seems to believe that the Supreme Court's summary assessment process presents her with a blank cheque. Her bill of costs is obviously and grotesquely inflated.

86. On the basis that Attorney General's costs on appeal should be no more than 50% of her costs for the original application (ie £7,500), that 50% of those costs (ie £3,500) should be attributed to the jurisdictional issue which occupied the greater part of the Court's judgment, and that a corresponding sum should be ordered in my favour, the appropriate order is to make no order for costs.

87. If, to the contrary, the Court concludes that there would otherwise be a net order of costs in favour of the Attorney-General, the Court should nevertheless make no order for costs because:

    a. I cannot afford to pay even the £15,000 costs that is already order against me and it would be wrong to order me to pay more than I can pay;

    b. A cumulative financial penalty of more than £20,000 (i.e. the £5,000 fine and £15,000 costs) would be an excessive interference with Article 10, most particularly in the context of an act of conscience, which caused no substantial harm or interference with the rights of others.

88. The country, and the wider international community, face numerous intersecting crises - of health, widening inequality, resource depletion, rising costs of living, international conflict and the rapid degradation of the climatic conditions and ecosystems on which life on earth depends.

89. The Government, increasingly paralysed in the snares of its own dishonesty and corruption, attaches less priority to confronting those crises than to suppressing and degrading those who hold it to account (such as peaceful protestors, the BBC, the Standards Commissioner, the courts and its own dissenting MPs). Its assault on dissent is an assault on democracy.

90. The Supreme Court must be weary of this case, which will benefit from fresh pairs of eyes in Strasbourg.

TIM CROSLAND
THE APPELLANT
31 JANUARY 2022