



10 May 2021

PRESS SUMMARY

Her Majesty's Attorney General (Applicant) v Crosland (Respondent) [2021] UKSC 15

JUSTICES: Lord Lloyd-Jones, Lord Hamblen, Lord Stephens

BACKGROUND TO THE PROCEEDINGS

On 7 and 8 October 2020, the Supreme Court heard an appeal in the case of R (*Friends of the Earth Ltd and others*) v *Heathrow Airport Limited* [2020] UKSC 53 (“**the Heathrow appeal**”). Mr Timothy Crosland, an unregistered barrister, represented the charity Plan B Earth in those proceedings. On 9 December 2020, a copy of the Supreme Court’s draft judgment was circulated to the parties’ representatives in accordance with UKSC Practice Direction 6. Markings on the draft judgment, the rubric on its title page and the covering email in which it was sent stated that the draft was strictly confidential. On 15 December 2020, the day before the judgment was due to be handed down, Mr Crosland sent an email to the Press Association containing a statement in which he disclosed the outcome of the appeal, stating, among other things, “*I have taken the decision to break the embargo on that decision as an act of civil disobedience. This will be treated as ‘contempt of court’ and I am ready to face the consequences.*”. The statement was also published on Plan B Earth’s Twitter account. These disclosures led to the publication of the outcome of the Heathrow appeal in the national media and on Twitter on 15-16 December, prior to the judgment being handed down at 9:45am on 16 December 2020. The breach of the embargo was referred to the Attorney General by Lord Reed, the President of the Supreme Court, on 17 December 2020. On 12 February 2021, the Attorney General applied to the Supreme Court to have Mr Crosland committed for contempt of court.

These proceedings are not about the substance of the judgment in the Heathrow appeal. Rather, they are concerned with the following key issues which the Court must determine: (1) whether Mr Crosland knew of the embargo and, with that knowledge, disclosed the result of the Heathrow appeal to the public; (2) whether Mr Crosland’s conduct constituted a civil or criminal contempt of court; (3) if the contempt of court is proved to the criminal standard, what is the appropriate penalty?

JUDGMENT

The Supreme Court finds that Mr Crosland’s conduct constitutes a criminal contempt of court, imposing a fine of £5,000.

REASONS FOR THE JUDGMENT

Issue 1 – Findings of Fact

Having considered the written and oral submissions made by both parties, the Court makes the following findings of fact. First, Mr Crosland was responsible for the disclosure of the outcome of the Heathrow appeal. He has admitted the publication of the statement to the Press Association and the subsequent post on the Plan B Twitter account [18]. Secondly, Mr Crosland was aware of the embargo when he made the disclosures, as demonstrated by his personal statement in which he said, “*I am breaking the court embargo on Heathrow...*” [19]. Finally, Mr Crosland’s argument that the rubric on the draft judgment was unclear is without substance. The rubric and the covering email in which the draft was sent made the position abundantly clear: Mr Crosland’s published statement shows that he was in no doubt that his conduct would be likely be treated as a contempt of court [20]-[21]. The Court therefore concludes that these disclosures were deliberate and calculated breaches of the embargo.

Issue 2 – Liability for Contempt of Court

Mr Crosland accepts that he was aware that he was breaking the Court's confidentiality but maintains that he considered his actions to be lawful. He argues, among other things, that his breach of confidentiality was a reasonable and proportionate measure to prevent harm to the public as a result of global warming, pursuant to articles 2 and 10 of the European Convention on Human Rights. He also seeks to rely on the criminal defences of necessity and duress of circumstances [29]-[38].

Criminal contempt of court is conduct which goes beyond mere non-compliance with a court order and involves a serious interference with the administration of justice (*Director of the Serious Fraud Office v O'Brien* [2014] UKSC 24). In addition, it must be proved that the accused knew of the court order and deliberately breached it. It is not necessary to prove an ulterior intention to interfere with the administration of justice (*Solicitor General v Cox* [2016] 2 Cr App R 15) although that is also established here. The present case concerns a court order which was made to protect the administration of justice itself and its breach involves a general interference from which the administration of justice must be safeguarded. The strictly confidential basis upon which draft judgments are provided to parties is well-established, as is the damage to the administration of justice which breaches of this duty of confidentiality will cause (*Director of Public Prosecutions v P (No 2)* [2007] EWHC 1144 Admin; *R v Noshad Hussain* [2013] EWCA Crim 990). The breach of duty in this case is serious, as it undermines both the authority of the Court and the powerful public interest in the Court's draft judgments procedure, which depends upon parties' respect for the confidential nature of that process [22]-[28]. Mr Crosland's argument that the disclosure was a justifiable breach of confidentiality is misplaced, as it conflates the status of a court order with other duties of confidence which may arise in the law of equity or contract. His article 2 argument is also without merit, as there is no rational connection between a breach of the embargo and the harm which Mr Crosland says he was seeking to prevent. As to article 10 ECHR, while the embargo did constitute a restriction on his freedom of expression, it was clearly necessary in order to achieve the legitimate objective of maintaining the authority of the judiciary and judicial decisions and was a proportionate means of achieving that result. It is also clear that there is no scope for the defences of necessity or duress of circumstances in this context [29]-[41].

In light of the facts found, the Court therefore accepts the Attorney General's submissions on criminal contempt, concluding that: (i) the breach of the embargo was an interference with the administration of justice; (ii) that the threshold of seriousness is passed in this case; and (iii) the breach was deliberate [22]-[28], [42].

Issue 3 – Penalty

The Court has considered the guidance as to the correct approach to determining the penalty in criminal contempt cases in *Liverpool Victoria Insurance Company Limited v Khan* [2019] 1 WLR 3833 [43]-[43]. In terms of culpability, this was an interference with the administration of justice sufficiently serious to constitute a criminal contempt of court, involving the abuse of the Court's judgment hand down procedure to gain publicity. As to the harm caused, the outcome of the judgment was published very widely on social media which risks undermining the confidential nature of the Court's hand down procedure. That said, it is noted that little direct harm was caused by the disclosures. While there is no principle which justifies treating the conscientious motives of a protester as a licence to flout court orders with impunity, the Court does accept that greater clemency is normally required in cases of civil disobedience (see *Cuadrilla Bowland Limited v Persons Unknown* [2020] EWCA Civ 9) [45]-[47]. The Court has also borne in mind the governing principles when imposing penalties for conduct which engages article 10 ECHR, in addition to the fact that Mr Crosland is of good character [49]-[51]. In light of these factors, the Court concludes that it is appropriate to impose a fine of £5,000. In determining the appropriate level of fine, the Court has taken account of (i) what Mr Crosland has told the Court about his means and (ii) the fact that he faces disciplinary proceedings before his professional body [52].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>