

**THE JUDGMENT IN R v. ALDERSHOT MAGISTRATES COURT ex parte  
MATTHEW O' CONNOR & DONALD JERRARD, HMCTS INTERESTED PARTY,  
HANDED DOWN 4 NOVEMBER 2016 (Case CO/1252/2015)**

**BACKGROUND** When Matt O'Connor, founder of Fathers4Justice, appeared for trial at Aldershot Magistrates Court on 20 February 2015 on a minor s.5 Public Order Act 1986 offence all his supporters and other interested members of the public were barred entry to the Court Building by Court Manager Donna Beeson and Regional Security Officer Richard Harvey. These HMCTS officials, and court security officers, even barred 2 defence witnesses as well, one of them a Hampshire County Councillor, Mr Anthony Hooke. Mr O'Connor refused to participate in a trial not held in open court and the Bench adjourned to permit him to bring a Judicial Review in the High Court of their decision to exclude nearly everyone who wanted to attend the trial. The Judicial Review trial took place on 21 & 24 October 2016 and the Divisional Court Judgment, Judges Lord Justice Fulford and Mr Justice Leggatt, was handed down on 4 November 2016. One of the excluded persons at Aldershot, Mr Donald Jerrard, retired solicitor, was joined as a 2<sup>nd</sup> Claimant as a representative member of the public.

**SUMMARY OF THE JUDGMENT** The Judgment resoundingly upholds the principle of Open Justice, the ancient Common law right of the public to attend criminal trials, and the Rule of Law in that the power and authority of the judiciary and courts is not to be usurped by bureaucrats, officials, and security officers of HMCTS making their own independent decisions as to who can or cannot enter Court buildings to attend court cases. Specifically, the High Court held as follows:-

1. *"It is implicit in the open justice principle that members of the public who wish to attend a criminal trial have a right to do so. The deep historical roots of this right were reviewed by the US Supreme Court in Richmond Newspapers, Inc v. Virginia, 448 US 555 (1980). In a learned opinion Burger CJ explained why, in the light of the long and unbroken history in England and America of criminal trials being presumptively open, the right of a citizen to attend a criminal trial is a constitutional right even though it is not explicitly mentioned in the US Constitution. Many statements of this fundamental right can also be found in our own case law. In Scott v Scott [1913] AC 417, 440, the Earl of Halsbury said: "I am of opinion that every Court of justice is open to every subject of the King"". (Judgment Para.27).*

2. Beeson and Harvey behaved unlawfully in excluding the members of the public from the Court Building and attending Mr O'Connor's trial. (Judgment Paras.41,53).
3. The Magistrates' decision to exclude was also unlawful in that they did not exercise a judicial discretion and investigate the facts, but simply followed the unevidenced advice of Beeson and Harvey. (Judgment Paras.38,53).
4. The Magistrates violated Common law fairness (and the Criminal Procedure Rules) in not affording at least one representative member of the excluded group an opportunity to make representations to the Court before a final decision was taken by the Court to exclude them from the Court Building. (Judgment Para.38).
5. Had the facts been investigated, there would have been no reason to exclude people from the Court Building and the trial. There had been peaceful demonstrations off the court premises at 2 previous hearings in the case in September, November 2014, and all supporters had been admitted to the court without disruption. (Judgment Para.40).
6. While wrongful exclusion of a person or several persons from a trial will not necessarily mean that the trial ceases to be held in open court – it depends on the circumstances and is a matter of fact and degree – in the present case at Aldershot the exclusion decision fell on the wrong side of the line and the proceedings were invalid as not held in open court as required at Common law and under s.121(4) Magistrates' Courts Act 1980. Not only because nearly everyone who actually wished to attend was excluded but also because, *"Mr O'Connor's case had aroused a strong interest, not only among some supporters of his organisation but also among some individuals involved in local Hampshire politics. To prevent all the people who came to support Mr O'Connor, without any valid reason, from exercising their right to observe the proceedings not only created a strong and understandable sense of grievance but had the consequence that justice could not be seen to be done"*. (Judgment Paras.48,49,53).
7. The High Court firmly rejected the propositions advanced by counsel Mr Oliver Sanders for HMCTS and the defendant Magistrates Court that: *"(a) HMCTS is the primary decision maker, (b) the final decision whether to admit a person to or exclude a person from a court building lies with HMCTS, and not with the judiciary, and (c) although there should be consultation, in a case where HMCTS and the court disagree over an exclusion, the view of HMCTS must nevertheless prevail"*. The High Court held that, *"where a*

*member of public is seeking to attend a particular court hearing and there is a dispute or room for dispute about whether they have the right to do so, that question should be decided by the court concerned at the time the question arises. .... Decisions to exclude members of the public potentially affect the fairness and validity of the court process. It is therefore integral to the court's ability to control its own process that such decisions are taken by the court". (Judgment Paras.23,34).*

8. The High Court rejected the "property rights" submission of HMCTS counsel that, *"as the occupier of the building in which the Aldershot Magistrates' Court sits, HMCTS has the ordinary power of an occupier to give or withhold permission to enter the building or to impose conditions on entry in its discretion".* The High Court held, *"Access to a court building for the purpose of attending a public hearing is a matter of legal right and does not require any express or implied permission from the occupier". (Judgment Para.28).*

9. The High Court was also critical of the HMCTS practice of issuing "banning letters" to inform an individual that he or she is banned from entering a particular court building for a specified period of time. Dr Michael Pelling, advocate by Leave of the Court for Mr O'Connor, had submitted that HMCTS has no lawful authority to issue such letters and that to do so involves a usurpation of powers which belong only to the courts. The High Court held that, *"This criticism seems to us to have considerable force. It is apparent from the pro forma "banning letter" annexed to the HMCTS operating procedures that such letters assume that HMCTS has the ordinary rights of an occupier to restrict entry to its premises. We have explained in this judgment why that assumption is mistaken". (Judgment Para.51).*

10. The Judgment ends with 2 formal Declarations (Judgment Para.53):-

(1) That the decisions of the court managers and of the magistrates sitting at Aldershot Magistrates' Court on 20 February 2015 to exclude Mr Jerrard and other members of the public who sought to attend the Mr O'Connor's trial from the court building were unlawful; and

(2) That, in consequence, no valid proceedings in Mr O'Connor's trial took place on that day.

4/11/2016

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