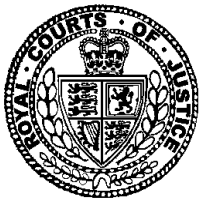

Neutral Citation Number: [2019] EWCA Civ 1938

Case No: C1/2019/0150

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM the High Court (Queen's Bench Division)
Administrative Court
Mr Justice Swift

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/11/2019

Before :

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE SINGH
and
LADY JUSTICE NICOLA DAVIES

- -

Between :

VOTE LEAVE LTD	**Appellant**
- and -	
THE ELECTORAL COMMISSION	**Respondent**

- -
- -

Mr Timothy Straker QC and **Mr James Tumbridge** (respectively instructed by, and of, **Venner Shipley**) for the **Appellant**
Mr Philip Coppel QC and **Mr Ravi Mehta** (instructed by the **Treasury Solicitor**) for the **Respondent**

Hearing date: 3rd October 2019

- -

Approved Judgment

Lord Justice Underhill:

INTRODUCTORY

1. The Appellant, Vote Leave Ltd ("VL"), was the designated lead campaigner for the "leave" outcome in the 2016 EU referendum. The Electoral Commission, which is the Respondent, has responsibility under the Political Parties, Elections and Referendums Act 2000 ("PPERA") for, among other things, monitoring and ensuring compliance with the statutory rules which apply to the financing of referendum campaigns. Non-compliance may constitute an offence. I give details of the relevant statutory provisions below.

2. In November 2017 the Commission opened an investigation under Part X of PPERA into related allegations of contraventions of those rules by various persons, including VL. The details of the matters investigated are not material for the purpose of this appeal: broadly speaking, they concern payments made to a Canadian data analytics firm called Aggregate IQ ("AIQ") for campaign services during the referendum campaign and how those payments were reported to the Commission.

3. On 17 July 2018 the Commission served two Notices (dated 16 July) under paragraph 6 (5) of Schedule 19C of PPERA notifying VL of its decision to impose "variable monetary penalties" (in ordinary language, fines) on it in respect of four offences. The fines for the first three offences, covered by what I will call the first Notice, totalled £41,000; and the fine for the fourth offence, covered by the second Notice, was a further £20,000. On the same date it served Notices on two other leave campaigners – Mr Darren Grimes, who ran an unincorporated association BeLeave; and Mr David Banks, the responsible person for an organisation called Veterans for Britain – in respect of related offences.

4. The same day the Commission published on its website a document entitled "Report of an Investigation in respect of Vote Leave Limited, Mr Darren Grimes, BeLeave, Veterans for Britain, concerning Campaign Funding and Spending for the 2016 Referendum on the UK's Membership of the EU" ("the Report"). The Report runs to 38 pages and gives an account of the Commission's investigation and findings, culminating in its determinations as to the offences for which VL, Mr Grimes and Mr Banks were fined.

5. On 8 October 2018 VL applied to the High Court for permission to apply for judicial review of "the making and publishing" of the Report. Mr Grimes and Veterans for Britain were named as interested parties. It is important to emphasise at this stage that VL's challenge was not to the Commission's decision that it had committed the offences for which it was fined, which was, as noted below, the subject of a separate appeal. Rather, the objection was to the publication of the Report: it was and is VL's case that the Commission had no power under PPERA to publish such a report.

6. On 20 November 2018 Yip J refused permission to apply for judicial review. VL renewed its application at an oral hearing before Swift J on 15 January 2019 but he too refused permission.

7. VL applied for permission to appeal against Swift J's decision. By an order dated 4 June 2019 Hickinbottom LJ granted permission to apply for judicial review and directed, pursuant to CPR 58.5 (5) and (6), that the application be retained in this Court.

8. Before us VL has been represented by Mr Timothy Straker QC, leading Mr James Tumbridge of Venner Shipley. The Commission has been represented by Mr Philip Coppel QC and Mr Ravi Mehta. The interested parties did not appear and were not represented.

9. It is convenient to mention at this stage two pieces of related litigation.

   (1) A person who is fined by the Commission under the provisions in question has a right to appeal to the County Court. Originally, both VL and Mr Grimes appealed against the fines imposed on them, and the two appeals were directed to be managed together. On 29 March 2019 VL discontinued its appeal, but Mr Grimes proceeded. By a decision dated 19 July HH Judge Dight CBE, sitting in the Central London County Court (Mayor's and City of London), allowed Mr Grimes's appeal on a particular basis which I need not explain save to say that it depended on the procedural consequences of the precise formal relationship between him and BeLeave.

   (2) Secondly, in 2017 the Commission decided not to investigate whether payments made by VL to BeLeave, from which AIQ's bills were paid, were in breach of the applicable limits on VL's campaign spending. A challenge to the lawfulness of that decision was upheld by the Divisional Court in March 2018, but on appeal its decision was set aside by this Court: see *R (Good Law Project) v The Electoral Commission* [2019] EWCA Civ 1567.

   Mr Straker appeared at some points in his submissions to be suggesting that those two decisions called into question the basis of the Commission's decision to fine VL. Mr Coppel disputed that, pointing out that both appeals were decided on grounds which had no application to the basis on which the fines with which we are concerned were imposed. So far as I can see, that is correct, but it is unnecessary to consider the point because the correctness of the decision to fine VL is not material to the issue before us: that issue is limited to whether the publication of the Report relating to that decision was within the Commission's statutory powers.

THE STATUTORY BACKGROUND

10. Part I of PPERA is headed "the Electoral Commission". Section 1 provides for the establishment of the Commission. Sub-section (6) incorporates Schedule 1, which contains more detailed provisions about the Commission. Paragraph 2 of Schedule 1 reads:

> "The Commission may do anything (except borrow money) which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of their functions."

That language is substantially the same (apart from the prohibition on the borrowing of money) as the well-known terms of section 111 (1) of the Local Government Act 1972, which empowers local authorities "to do any thing … which is calculated to facilitate,

or is incidental or conducive to, the discharge of any of their functions". That provision codifies what had long been recognised to be the position at common law.

11. Sections 5-13 are headed "Commission's General Functions". I need not set these out, but I should note that sections 5 and 6 impose particular duties on the Commission to make reports – under section 5 to make and publish a report on the administration of each election or referendum, and under section 6 to submit reports from time to time to the Secretary of State on various specified matters. In this connection I should refer also to paragraph 20 of Schedule 1, which requires the Commission to report annually to Parliament about the performance of its functions in the year in question and to publish that report.

12. Part VII contains provisions regulating the conduct of referendums. For our purposes I need note only that they include, in section 118, limits on the amounts that may be spent by "permitted participants" and, in section 122, requirements on permitted participants to submit returns of referendum expenses incurred by them. Contravention of those requirements is an offence: see section 118 (2) and section 122 (4). Two of the offences for which VL was fined were under section 122 (4) and one under section 118 (2).

13. Part X of the Act is headed "Miscellaneous and General". Sections 145-148 are headed "Enforcement of Act". The sections relevant for our purposes are 145-147. I take them in turn.

14. Section 145 is headed "Duties of Commission with respect to … compliance with controls imposed by the Act etc". Sub-section (1) reads, so far as material:

> "The Commission must monitor, and take all reasonable steps to secure, compliance with –
>
> (a) the restrictions and other requirements imposed by or by virtue of –
>
> (i) …
>
> (ii) Parts 3 to 7, and
>
> (iii) sections 143 and 148; and
>
> (b) …"

15. Section 146 is headed "Investigatory powers of Commission" and gives effect to Schedule 19B. The Schedule contains detailed provisions about the conduct of investigations by the Commission. These include powers to require the production of documents. Paragraph 13 (1) provides that failure, without reasonable excuse, to comply with any requirement imposed under the Schedule constitutes an offence. The fourth of the offences for which VL was fined was under paragraph 13 (1), for failure to produce documents by a specified date. Paragraph 15 requires the Commission to include in its annual report to Parliament (see para. 11 above) information about the use made by it of its investigatory powers during the year in question.

16. Section 147 (which was substituted with effect from 1 December 2010, by the Political Parties and Elections Act 2009) is headed "Civil Sanctions" and reads:

"Schedule 19C makes provision for civil sanctions in relation to–

(a) the commission of offences under this Act;

(b) the contravention of restrictions or requirements imposed by or by virtue of this Act."

It was under the civil sanctions regime established by section 147 and Schedule 19C that the Commission imposed on VL the fines which gave rise to the Report. I need not attempt a full summary of the provisions of the Schedule, but the following points are relevant for our purposes:

(1) The fines were imposed under paragraph 5, which empowers the Commission to impose one or more "discretionary requirements" on a person who it is satisfied beyond reasonable doubt has committed a prescribed offence. Such discretionary requirements include, by sub-paragraph (5) (a), "a requirement to pay a monetary penalty to the Commission of such amount as the Commission may determine", elsewhere referred to as a "variable monetary penalty" – in other words, as I have said, a fine.

(2) Where the Commission proposes to impose a discretionary requirement it is required by paragraph 6 (1) to give notice to that effect (sometimes referred to as an "initial notice") to the person in question, who is entitled (by sub-paragraph (2)) to make written representations and objections in response.

(3) Paragraph 6 (5) provides that where the Commission decides to impose a discretionary requirement it must serve a notice on the person in question specifying the requirement. The notice is the actual instrument by which the requirement – in this case, the fine – is imposed. By paragraph 7 (3) such a notice must:

"... include information as to —

(a) the grounds for imposing the discretionary requirement;

(b) where the discretionary requirement is a variable monetary penalty —

(i) how payment may be made,

(ii) the period within which payment must be made, and

(iii) any early payment discounts or late payment penalties;

(c) rights of appeal;

(d) the consequences of non-compliance."

(4) Paragraph 6 (6)-(7) provides for a right of appeal to (in England and Wales) the County Court.

(5) Paragraph 25 requires the Commission to publish guidance as to, among other things, "the sanctions (including criminal sanctions") that may be imposed on a person who commits an offence under the Act, including guidance about its use of the power to impose discretionary requirements.

THE NOTICES AND THE REPORT

17. Both the paragraph 6 (5) Notices served on VL follow the same format. Section 1 contains various preliminary and formal matters, including the notification of the right of appeal required by paragraph 7 (3) (c) of Schedule 19C. Section 2 is headed "Grounds to Impose the Penalty". This follows a systematic structure reflecting the matters that the Commission had to determine. I need not attempt a detailed summary. Broadly, however, it begins with an explanation of why the Commission is satisfied (to the criminal standard) that each offence has been committed, identifying the evidence relied on and giving reasoned conclusions on disputed points; proceeds to give reasons for its decision to propose a fine, as notified in the initial notice; considers VL's representations in response to the initial notice; and reaches conclusions on the appropriate level of fine. In the first Notice section 2 runs to some 34 pages, and in the second Notice it covers seven.

18. We were not shown the Notices in the cases of Mr Grimes, BeLeave and Veterans for Britain; but no doubt they followed the same structure.

19. The Report was published in accordance with paragraphs B.14-16 of Appendix B to the Commission's Enforcement Policy. Paragraph B.14 says that once an investigation is concluded the Commission will publish the outcome on its website and lists the minimum information which will appear. Paragraph B.16 says that the Commission "may also produce a more detailed investigation report and/or issue a media statement where this will further our enforcement objectives and it is in the public interest to do so".

20. The Report is evidently a "more detailed investigation report" of the kind identified in paragraph B.16. What it does is to present in a single document the findings of the Commission's investigation about the payments made to AIQ and how they had been treated in the various returns. This necessarily involved a different structure from that adopted in the Notices, which were concerned only with the conduct of the person on whom the fine in question was imposed. However, the principal sections of the Report, sections 3 and 4 ("The Investigation" and "The Investigation Findings"), cover the same factual ground as section 2 in the Notices and, unsurprisingly, are substantially similar in their content. Neither party attempted a detailed comparison, but Mr Coppel in his skeleton argument identified a number of passages in the Report which were essentially cut-and-pasted from the VL Notices. Mr Straker said that the section of the Report setting out the history of the investigation was more elaborate than its treatment in the Notices, and that the circumstances of the creation of BeLeave were dealt with rather differently; but we were not taken to the passages in question and he did not submit that the differences were of fundamental importance or that there was any important material in the Report that did not reflect equivalent material in the Notices, even if not identically expressed.

THE ISSUE: DISCUSSION AND CONCLUSION

21. It was common ground before us that there is no provision in PPERA which expressly empowers the Commission to make or publish a report of the kind which was made in the present case – that is, a report setting out the result of an investigation under Schedule 19B which culminated in findings of offences under the Act and the imposition of fines for those offences under section 19C. Mr Straker submitted that such a power could not be conferred by implication. Where it was intended that the Commission should make or publish reports the Act said so in terms: see, e.g. sections 5, 6 and 20. The publication of a report of this kind was liable to have serious prejudicial effects on the entities or individuals who were the subject of its findings because of the press publicity which it would attract. He submitted that that had indeed been the effect in the present case: he referred us to passages in a witness statement of Mr Patrick Moynihan, a director of VL, which showed the degree of hostile – he says unfairly hostile – publicity which VL and individuals associated with it had received following the publication of the Report. Its publication was accordingly in substance a further sanction, in the nature of a public reprimand, over and above the code of sanctions provided for in Schedule 19C and thus unaccompanied by any right of appeal; that was inconsistent with the scheme of the Act and unlawful. He referred in this context to what he said was the principle that returning officers were not entitled to take any step beyond what the statute expressly provides for: he referred to *R (De Beer) v Returning Officer for the London Borough of Harrow* [2002] EWHC 670 (Admin) and *Begum v Returning Officer for the London Borough of Tower Hamlets* [2006] EWCA Civ 733, though he did not take us to them in his oral submissions. He said the same approach should be taken to the powers of the Electoral Commission in what is inevitably a highly sensitive area of law.

22. I do not accept that submission. In my view the publication of the Report was within the Commission's powers because it was incidental to the carrying out of its enforcement functions under Part X of PPERA and was accordingly authorised by paragraph 2 of Schedule 1 of the Act.

23. I take first the functions in question. As noted above, sections 145-148 of PPERA fall under the heading "Enforcement of Act". Section 145 (1) requires the Commission to "monitor, and take all reasonable steps to secure, compliance with" various requirements of the Act, including those of Part 7. Mr Straker submitted that the publication of the Report could not be regarded as "incidental to" the function of "monitoring" or "securing" compliance: as a matter of ordinary language, those terms are directed at the conduct of participants in a referendum campaign as it happens and not to investigating or punishing non-compliance subsequently. He might perhaps be right about "monitoring" (though para. 37 of Singh LJ's judgment has given me pause), but I regard his approach to "securing compliance" as over-literal: since the knowledge that non-compliance may be investigated and punished is an important incentive to compliance, proceeding with such investigation and punishment, albeit after the event, can naturally be described as a step to secure compliance. However, even if that is debatable the point does not depend on the construction of those words alone. Section 145 must be read with sections 146 and 147 and with Schedules 19B and 19C to which they give effect. Whether those provisions are regarded as fleshing out the general terms of section 145 (1) or as supplementing them, they form part of a package of enforcement functions conferred on the Commission by Part X.

24. Making a public report on how those functions have been performed in a particular case can in my judgment properly be described as "incidental" to their carrying out. Although that seems to me a natural description as a matter of ordinary language, in so far as there is any ambiguity I should say that it also seems to me the right construction as a matter of policy. There is an important public interest in public bodies with an investigatory function being as open as possible about inquiries which they have conducted: for a recent affirmation of that principle, albeit in a different context, see para. 1 of the judgment of Lord Mance in *Kennedy v Charity Commission* [2015] UKSC 20, [2015] AC 455 (pp. 488-9). That value is particularly important in the case of investigations carried out by the Electoral Commission, both because of the centrality of its functions to our democracy and because they may, as here, result in findings that criminal offences have been committed: indeed the Commission's role under Schedule 19C is quasi-judicial. That being so, it is highly desirable – and, I believe, in no way problematic – that the "incidental powers" provision in PPERA should be construed in a way which allows the Commission to publish, in whatever form seems appropriate to it, the results of its investigations (so long, of course, as that is done in a reasonable and responsible manner). It is clear from the terms of the Commission's Enforcement Guidance (see para. 19 above) that it believes that the publication of detailed investigation reports will sometimes be in the public interest; and that is in my view plainly right.

25. It might be said that such publication is unnecessary because notices under paragraph 6 (5), which Mr Straker accepted were public documents, should contain all the information necessary to justify the determinations which they record, and the consequent "discretionary requirements", and there is no need to publish anything else. But even if that is sometimes so there will certainly be cases where the Commission reasonably regards it as important to report the results of its investigations in some other form. The present case is a good example: it would not be straightforward for a member of the public to gain a complete picture of the investigation from reading several individual Notices, all of which only tell part of the story, and there is obvious value in a single report covering the same ground in a comprehensive and comprehensible way.

26. If anything, the fact that the Notices are public documents is a point against Mr Straker's submissions, since it would seem to render much of VL's objection to the publication of the Report rather unreal. Mr Straker accepted that it would have been within the Commission's power to announce on its website that it had issued the paragraph 6 (5) Notices and/or to issue a press release to that effect, in either case attaching or providing links to the full texts: presumably, though he did not expressly acknowledge this, the power to do so would derive from paragraph 1 (2). It might be thought that such publication would be just as damaging and prejudicial to VL as the publication of the Report is said to have been, since they contain substantially the same material (see para. 20 above). Mr Straker said that the Report was different because its contents would be understood to be unequivocal findings of fact, whereas the Notices contained explicit statements that VL could appeal and would accordingly be understood to be provisional, or qualified. I find that distinction unconvincing. Although the Report presents the material in a more accessible form, it is fanciful to suppose that the publication of a press release attaching the Notices would not have attracted much of the same attention.

27. It follows from the foregoing that I do not accept Mr Straker's submission that the publication of the Report constituted a distinct sanction falling outside the scheme provided for by the Act. The only sanction on VL is the requirement to pay the fines. The Report is simply an explanation of the basis on which the decision to impose that sanction, and the sanctions on the other participants, was taken. It is ancillary to that decision and not a separate reprimand. It also follows that I see no need for the application of the principle which he said applied in construing the powers of returning officers.

28. Mr Straker attempted to draw some support for his case from the decision of Lord Bingham CJ in *R v Liverpool County Council, ex p Baby Products Association* [2000] LGR 171. In that case the council had issued a press release impugning the safety of a particular brand of baby-walker. Lord Bingham held that it had had no power to do so because the Consumer Protection Act 1987 and the regulations made under it provided for "a detailed and carefully crafted code" under which a local authority could issue suspension notices in respect of products which were suspected to be unsafe, subject to safeguards intended to protect the legitimate interests of manufacturers and suppliers; and the press release would have the same effect as such a suspension while circumventing those protections (see p. 178 *c-g*). I can see no analogy between that case and this. I have already rejected Mr Straker's submission that the publication of the Report constituted a separate sanction and therefore that it subverted the code of sanctions provided for in PPERA. In fact, in one respect Lord Bingham's judgment might be thought to give at least some support to the Commission's case. At p. 178 *b-c* he records with apparent approval the concession of counsel for the claimant (Mr Michael Fordham) that

> "... generally speaking, it was open to local authorities to publish information relating to their activities, at any rate within their areas. Had the council issued suspension notices in accordance with section 14 of [the 1987 Act], that fact could (he accepted) have been announced to the public. Had the council initiated any criminal proceedings that fact, and the outcome of such proceedings, could similarly have been announced to the public. Sections 142(2)[1] and 111(1) gave authority to make such announcements if statutory authority was needed[2]."

The release by a local authority of a press release in the circumstances referred to seems to me reasonably analogous to the issue of the Report in this case; and it is accordingly of interest that Mr Fordham acknowledged, and Lord Bingham apparently accepted, that it would fall within the scope of section 111 (1) of the 1972 Act, which is, as noted above, in substantially the same terms as paragraph 2 of Schedule 1 to PPERA.

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1 For completeness, I should note that section 142 (2) of the 1972 Act empowers a local authority to arrange for publication of information relating to its functions; but it is Mr Fordham's reference to section 111 (1) which is relevant for our purposes.

2 I doubt whether by using the phrase (as recorded) "if statutory authority was needed" Mr Fordham was intending positively to suggest that statutory authority was not needed. But if he was I believe that that would be heterodox: see para. 31 below.

29. Finally, I should say that the fact that PPERA contains some express provisions requiring the Commission to make reports of a particular kind – see para. 11 above – plainly does not demonstrate a statutory intention that it should have no power to publish any other kind of report.

30. The conclusion that the Commission was empowered to publish the Report by paragraph 2 of Schedule 1 to PPERA is sufficient to dispose of the claim. Mr Coppel in fact advanced three other bases on which the publication of the Report should be held to be within the Commission's powers. I will address them briefly but not in the detail that would be appropriate if any of them was the basis of my decision.

31. The first was that the Commission had a power, simply by virtue of being a public body and without reference to paragraph 2 of Schedule 1, to inform the public about its activities. He referred us to the decision of the Divisional Court, comprising Donaldson LJ and Woolf J, in *R v Director General of Fair Trading, ex p Taylor & Co Ltd* [1981] ICR 362. In that case the applicant, which was an importer and distributor of toys and electrical goods, had a long history of contravening safety regulations. The Director General of Fair Trading in the exercise of his statutory powers requested it to give a written assurance that it would commit no further offences, and the assurance was given. He then issued a press release setting out the terms of the assurance. The applicant contended that he had no power to do so. The Court rejected that contention, Donaldson LJ saying, at p. 294 C-D:

> "The Director General needs no statutory authority to speak and write about his work and about the misdeeds of others with which he is concerned in his work. Both the Director General and his office have full freedom of speech …"

That rather reads as if Donaldson LJ was proceeding on the basis that the power in question derived from the Director General's status as a natural person, in which case it is immaterial for our purposes[3]. But if it was intended as a general proposition about the powers of a statutory corporation, I believe that it should be read as if he had said "the Director General needs no *express* statutory authority …". It is in my view axiomatic that all the powers of such a corporation must derive from statute, though of course many of those powers may not be conferred express and will be enjoyed only because they are to be regarded as deriving from those functions that are so conferred. I certainly do not believe that the passage can be taken as authority for the proposition being advanced by Mr Coppel. Nor do I see what is gained by advancing the case in this way: paragraph 1 (2) gives the Commission all it needs.

32. Mr Coppel's second alternative was to argue that section 145 (1) conferred express authority on the Commission to publish reports of investigations and fines because doing so was a "step" which would secure compliance with the statutory requirements by other participants in the future: they would, he said, constitute "case studies" which would both provide guidance and have a deterrent effect on potential offenders. I need not express a concluded view on this argument, but I have to say that I do not find it a natural reading of section 145 (1) and prefer to reach the same result by treating the power to report as incidental to the Commission's express functions as explained above.

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3 It may also be debatable whether it is correct, but there is no need for us to consider that.

33. Finally, Mr Coppel relied on the Commission's duties under the Freedom of Information Act 2000. In bare outline, his case was that the Commission's "publication scheme", adopted pursuant to section 19 of the Act, included among the classes of information which it published "decision making processes and records of decision" and "enforcement actions and sanctions"; and that since the Report contained information in those classes it was obliged by the Act to publish it even in the absence of any other statutory power. When I first read the papers I found that argument unpersuasive. Mr Coppel in his oral submissions strove to shift me from that first impression, but the exercise succeeded only to the extent of satisfying me that a proper treatment of the question would require a careful analysis, both of the statutory provisions and of the Commission's publication scheme, of a kind which would not be justified in a case where it can have no bearing on the outcome.

34. I have not thought it necessary to review the judgment of Swift J. It was, as was entirely appropriate to an *ex tempore* judgment refusing permission to apply for judicial review, succinctly (though clearly) expressed. I can say, however, that his reasoning seems broadly to the same effect as mine, though I think he attached more weight than I have to Mr Coppel's argument to which I refer at para. 32 above.

DISPOSAL

35. I would dismiss VL's application for judicial review.

Lord Justice Singh:

36. I agree that this application for judicial review should be refused, essentially for the reasons given by Underhill LJ. I would like to add a few words of my own because of the importance of the issues.

37. At paragraph 23 Underhill LJ refers to section 145 (1) of PPERA, which requires the Commission to "monitor, and take all reasonable steps to secure, compliance with" various requirements of the Act, including those of Part 7. Speaking for myself I would have no difficulty in construing the word "monitor" in this context as including acts of investigation and scrutiny which take place *afterwards* and not only contemporaneously. This is particularly so in a statutory context in which the "referendum period" is narrowly defined: in the case of the EU referendum of 2016 it ended on the date of the referendum. In practice it might be simply unrealistic for the Commission to monitor events as they take place. In my view, a broader construction of the word "monitor" is appropriate in this context.

38. Secondly, I would like to associate myself in particular with what Underhill LJ says at paragraph 24 above in relation to the public interest in making inquiries such as that conducted by the Commission as open as possible. This is important not only in cases such as this, where an investigation led to the imposition of fines, but would be equally important in cases where the Commission does not find a breach of the rules or no sanction is imposed. In such cases the public would still have an important interest in knowing that the Commission had gone about its work properly and conscientiously.

Lady Justice Nicola Davies:

39. I agree with both judgments.