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Case No: AC-2025-LON-003760

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/07/2026

Before :

LORD JUSTICE POPPLEWELL
MR JUSTICE HILLIARD

- -

Between :

THE KING	
(on the application of Matthew Wright)	**Claimant**
- and -	
MEDWAY MAGISTRATES' COURT	**Defendant**
- and –	
(1) THE ENVIRONMENT AGENCY	
(2) PHILIP BARKER	
(3) CLIVE MASSEY	
(4) MARK GREGORY	**Interested Parties**

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Jamas Hodivala KC, Vedrana Pehar and Kirsten Sjøvoll (instructed by **White & Case LLP**) for the **Claimant**
Andrew Marshall, Victoria Ailes & Joseph Millington (instructed by **The Environment Agency**) for the **First Interested Party**
The Second to Fourth Interested Parties did not appear and were not represented

Hearing dates: 23 & 24 June 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 22 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Popplewell :

Introduction

1. The Claimant ('C') was at material times the Chief Executive Officer of Southern Water Services Ltd ('the Company'). The Second to Fourth Interested parties were officers or senior operations managers of the Company. On 9 December 2025 the Environment Agency ('the EA') applied to the Medway Magistrates' Court for the issue of a summons charging them with an offence of conspiracy to defraud contrary to common law. C opposed that application on the grounds that the EA had no authority or power to institute such proceedings. The EA identified the power as that contained in section 37(1) of the Environment Act 1995 ('the 1995 Act'). On 23 May 2025 DJ (MC) Leake ('the Judge') heard detailed legal argument on the issue. He granted the EA's application and the summons was issued on 24 September 2025 ('the Summons') and served on C on 29 September 2025, although the Judge's reasons were not then available: they were set out in a detailed judgment dated 1 October 2025 but promulgated on 18 October 2015 ('the Judgment'). The Judge also issued summonses against the Company and another group of individuals, the details of which are not material. C applies for permission to apply for judicial review of the issue of the summons on the grounds that the EA has no power to institute such proceedings and that the summons is therefore a nullity. The application was listed for a rolled up hearing before this Court, together with an application by the EA to set aside an order of Mansfield J of 13 November 2025 by which he granted C anonymity in relation to the judicial review proceedings and imposed a reporting restriction pending determination of the judicial review application. For the reasons given below, I would refuse permission to apply for judicial review and refuse anonymity. Accordingly it not necessary to anonymise this judgment.

The alleged facts giving rise to the proceedings

2. The fraud alleged in this case involves the deliberate manipulation of wastewater treatment works to undermine the regulatory controls of the wastewater quality monitoring system for which the EA is responsible. It was summarised by the Judge in these terms:

> "8. The operation of wastewater treatment works in England requires authorisation by an environmental permit issued by the Agency under the Environmental Permitting (England and Wales) Regulations 2010 and 2016.
>
> 9. The sampling and testing of the final treated effluent discharge from wastewater treatment works used to be carried out by the Agency itself. However, an Operator Self-Monitoring ("OSM") scheme was subsequently introduced, which transferred that responsibility to the environmental permit holder. This was implemented by imposing conditions in the relevant environmental permit that required the duty holder to carry out the necessary sampling and testing and to report the results to the Agency. These testing reports were also provided by the Agency to Ofwat (the financial regulator) which used the reports to assess the performance of the wastewater treatment works.
>
> 10. The Agency asserts that these test results were important because:

(a) If the testing shows that the site is not compliant with the terms of the permit, that amounts to a breach of condition of an environmental permit, which is an offence and might result in revocation, suspension or variation of the permit.

(b) Repeated testing shows the extent of long-term compliance with the permit at a particular site.

(c) The results for operators are used annually to compare the performance of wastewater treatment companies year on year and against each other.

(d) Ofwat uses the results to sets the utility company's prices against certain delivery expectations. If a site's testing reveals an excessive number of non-compliant occurrences in a year, it will lead to a 'penalty'

(e) This penalty can be triggered for multiple environmental permit breaches leading to site 'failure'.

11. The OSM testing regime would be carried out to a pre-programmed annual frequency by teams separate from those operating the site, and where the dates of visits are not known or forewarned to the site operators. Built into the regime was a "no-flow" provision which was intended to apply where the flow at the particular (random) time of testing was insufficient for the sampling to occur. The effect of a no-flow result was that it was not regarded as a fail and no further sample was carried out by the operator that month or in that testing period.

12. The Agency alleges, in the present case, that there was a deliberate plan by officers of the Company to manipulate the OSM regime by contriving operational circumstances so that there was no flow through the relevant site at times when it was believed that the site would (or might) fail the OSM test, in order to avoid the consequences of the true OSM result being provided to the Agency and Ofwat."

3. I do not need to set out the facts in any more detail than this for the purposes of the issues which arise on this application. It is right to record, however, that the detail makes clear that what is alleged against C and the other Interested Parties involves carefully planned and extensive fraud and dishonesty at a high level within the Company and on a large scale, including, for example, arranging for wastewater to be removed from facilities by tankers in order to create no flow results, with a view to covering up pollution and deceiving those whose function is to protect the public from such harm. The EA says that by the Company's own assessment, it avoided penalties of the order of £45 million, and on the EA's assessment the figure is higher. The charge laid involves very serious allegations of criminal misconduct.

The rival arguments in outline

4. Section 37 of the 1995 Act provides:

37.— Incidental general functions

(1) Each new Agency (that is to say, in this Part, the Agency or SEPA)—

> (a) may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions; and
>
> (b) without prejudice to the generality of that power, may, for the purposes of, or in connection with, the carrying out of those functions, acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate;
>
> and the Agency may institute criminal proceedings in England and Wales.
> …

5. On behalf of C, Mr Hodivala KC does not suggest that the Judge would have erred in issuing the summons had it been sought by the Crown Prosecution Service ('CPS') or the Serious Fraud Office ('SFO'). The application is based solely on a challenge to the power of the EA to institute the proceedings. He submitted that the EA is a statutory corporate body which does not have the common law powers of a person to bring a private prosecution or any Crown prerogative to do so. Its power to prosecute is limited to that conferred by s. 37 of the 1995 Act. That is not a general power to prosecute for any offences, but is limited to such prosecutions as are incidental to its functions. The words in what I will label the hanging phrase ("and the Agency may institute criminal proceedings") should be read conjunctively with the earlier part of the section so as to be confined to criminal proceedings which are calculated to facilitate, or are conducive or incidental to, the carrying out of its functions. That does not extend to conspiracies, financial crime, dishonesty or fraud. It extends only to prosecutions for statutory offences under environmental legislation. It does not extend to any other statutory offences. Nor does it extend to common law offences of any kind. Nor does it extend to inchoate offences of any kind, such as conspiracy, attempt or accessory liability, even in respect of environmental statutory offences. Prosecution for offences other than statutory environmental offences might relate to its functions in a loose way, but they would be incidental to its incidental function of prosecuting statutory environmental offences and an incidental power cannot be used for purposes that are incidental to incidental functions, relying on *Hazell v Hammersmith and Fulham LBC* [1990] 2 AC 1; *R v Richmond upon Thames LBC ex pte McCarthy & Stone (Developments) Ltd* [1992] 2 AC 48; *Commissioner of the Independent Commissioner of Investigations v Police Federation* [2020] UKPC 11; and *Natural England v Cooper* [2025] EWCA Civ 15 [2025] 1 WLR 2384.

6. On behalf of the EA, Mr Marshall submitted that the EA has a general right of private prosecution and the question is whether s. 37 of the 1995 Act restricts such power. Against that background the hanging phrase in s. 37(1) should be read disjunctively from the earlier part of the section and given its full width as extending to proceedings for any criminal offence, relying on *R v Rollins* [2010] UKSC 39 [2010] 1 WLR 1922. Alternatively, if the hanging phrase is to be read conjunctively, prosecuting for conspiracy to defraud at common law is capable of being calculated to facilitate, or conducive or incidental to, the carrying out of its functions; and is so, "in its opinion", on the facts of the present case.

The Judgment

7. In a careful and closely reasoned judgment, the Judge rejected the EA's argument that the power in s. 37(1) was a general one, accepting the argument that the hanging phrase

was to be read conjunctively and that it extended to any offences which in the EA's opinion were calculated to facilitate, or conducive or incidental to, the carrying out of its functions. He rejected C's argument that it was limited to particular kinds of offence. At [111] he then said:

> "111. Arguably, the inclusion of words relating to the Agency's opinion in section 37(1) is sufficient to answer the issue raised by [C and the Interested Parties]: the Agency has laid information, and it is implicit in its doing so that it has formed the requisite opinion. Construed that way, it should not be for a magistrates' court considering whether to issue summonses to seek to go behind the opinion formed by the Agency. Rather, any claim that the Agency has acted in excess of its powers should be by way of (a) an application to the High Court for judicial review of the Agency's decision to prosecute, or (b) an application (here in the Crown Court) for proceedings to be stayed as an abuse of process (see R. v AB [2017] EWCA Crim 537 at [7])."

8. The Judge then went on at [112]ff to consider whether the prosecution of C and the Interested Parties for conspiracy to defraud would be calculated to facilitate, or conducive or incidental to, the carrying out of any or all of the EA's functions and concluded that it would.

9. What was said by the Judge at [111] gave rise to a further argument by Mr Hodivala that the Judge was wrong to treat the question as to the authority to bring proceedings as being subject to the EA's opinion, and falling outside the scope of what had to be determined by a magistrates court when addressing whether to issue a summons as identified in *R (Kay) v Leeds Magistrates Court* [2018] EWHC 1233 (Admin) [2018] 4 WLR 91 at [22] and the authorities there cited. In developing the argument Mr Hodivala drew a distinction between questions of law governing authority to prosecute, which the magistrates court has to decide for itself, and questions of fact as to the application of the law, which could properly be conclusively determined so far as the magistrates court was concerned by the EA's expression of opinion. I do not find it necessary to address this aspect of the argument because on the present application we have heard full argument on the scope of the EA's prosecution powers under s. 37(1) as a matter of law and will resolve that issue. Mr Marshall did not contend that that question was conclusively determined by the EA's opinion as to the correct construction of s. 37 and nor, to be fair to the Judge, was he so suggesting. Having resolved that question in favour of the EA, as I would, for the reasons explained below, it is plain that prosecuting these individuals for conspiracy to defraud in relation to the conduct alleged is incidental to the EA's functions in relation to wastewater management: prosecuting individuals for this kind of serious fraud in manipulating the regulatory system in the way alleged is clearly conducive to preventing the continued pollution which it was intended to conceal, preventing such conduct continuing, and deterring others from the same or similar conduct, which are plainly functions of the EA in promoting proper wastewater management standards and preventing pollution (cf *R (Securiplan) v Security Industry Authority* [2008] EWHC 1762 (Admin) [2008] CTLC 227 per Maurice Kay LJ at [12]). Prosecution is also conducive to recovering the benefits obtained from such criminality by confication orders under the Proceeds of Crime Act 2002 and/or recouping any loss caused under a compensation order. Mr Hodivala did not suggest otherwise if he was wrong in his primary contention as to the proper construction of s. 37(1) of the 1995 Act.

The core statutory and regulatory framework

10. We were referred to a large number of statutes and regulations. For ease of expression I have set out the parts referred to in full in an annex to this judgment, so as to be able to confine reference and quotation in this judgment to that necessary to explain my reasoning.

11. The EA is a creature of statute, established by section 1(1) of the 1995 Act (referred to in the Act as "the Agency") as a body corporate to carry out "the functions transferred or assigned to it by or under this Act". As those words indicate the 1995 Act conferred some functions on the EA, and transferred to it other functions which were previously performed by other entities. The transferred functions included those of the following bodies, which were conferred on those bodies by a raft of existing primary and secondary regulation:

    (1) the functions of the National Rivers Authority ('the NRA') under Parts II and III of the Water Resources Act 1991 in relation to control of water resources and control of pollution of water resources; and under other statutory provisions and regulations governing flood defence, land drainage, land and power works, fisheries, and as a navigation authority, harbour authority or conservancy authority; and the NRA's property rights; (the NRA was abolished by the 1995 Act);

    (2) the functions of waste regulation authorities in relation to control of pollution and environmental protection;

    (3) the functions of disposal authorities under waste regulation provisions;

    (4) the functions of the chief inspector of England & Wales under environmental protection and radioactive substances legislation;

    (5) the functions of inspectors issuing improvement and prohibition notices in relation to some aspects of health and safety;

    (6) the functions of the Secretary of State in relation to disposal of radioactive waste, effluent, sludge use and soil testing in agriculture, amongst other ministerial functions.

12. Section 4 identified that the principal aim and objective of the EA was to discharge its functions so to protect or enhance the environment as to contribute to the objective of achieving sustainable development, to the extent contained in guidance to be given by the Secretary of State. This does not define or enlarge the EA's functions or powers, but is rather concerned with how they are to be exercised.

13. Section 5 is concerned with the EA's pollution control powers, defined as those arising under various identified enactments or regulations, and provides for them to be exercised for the purposes of preventing or minimising or remedying or mitigating the effects of pollution of the environment. Those functions are limited to England and Wales, with the section conferring equivalent powers on a separate agency for Scotland, the Scottish Environment Protection Agency ('SEPA').

14. Section 6 confers a general duty on the agency to do various things including the following: to the extent it considers desirable, to promote conservation and enhancement of natural beauty and amenity of inland and coastal waters and associated land, the conservation of flora and fauna dependent on an aquatic environment, and the use of such waters and land for recreational use; to take all action it may consider desirable or necessary to conserve redistribute or otherwise augment water resources and secure their proper use; to exercise a general supervision over all matters relating to flood defence; and to maintain, improve and develop salmon, trout, freshwater and eel fisheries.

15. Section 7 contains provisions concerning environmental and recreational duties and provides, amongst other things, that within necessary constraints the EA should seek to provide the public with recreational access to environmental spaces within the sphere of its functions, including access to inland and coastal waters and associated land, areas of natural beauty, and historic sites and buildings.

16. Section 10 identifies incidental powers which the EA shall have in relation to protection against pollution, carrying out works, and the provision of supplies of water. They include the provision of houses, buildings and recreation grounds for its employees.

17. Section 37 contains the provision whose construction is at the heart of the current dispute and which I have set out above.

18. Section 108 confers certain powers of investigation on the EA (amongst other enforcing authorities), including requiring information and records, and powers of entry, search and seizure for the purpose of determining whether any provision of "the pollution control enactments" is being or has been complied with and in exercising or performing one or more of its "pollution control functions"; "pollution control functions" are defined as those conferred or imposed on it by eleven identified statutes or by pollution regulations made pursuant to s. 2(2) European Communities Act 1972; "pollution control enactments" are defined as the enactments and instruments "relating to" the pollution control functions.

19. Section 110 creates three statutory offences in connection with the exercise of section 108 powers of investigation by an "authorised person". Section 110(1) creates an offence triable either way of obstructing an authorised person in performance of their s. 108 powers or duties, with a maximum sentence of 2 years imprisonment; s. 110(2) creates a summary only offence of failure to comply with a requirement imposed pursuant to s. 108 or failure to cooperate with an authorised person exercising s. 108 powers, or preventing another from doing so, punishable with a fine; s. 110(3) creates an offence of falsely pretending to be an authorised person exercising s. 108 powers, punishable by a fine.

20. The Environmental Permitting (England and Wales) Regulations 2016 SI 1154/2016 ('the Permitting Regulations') replaced similar permitting regulations issued in 2010, following the introduction of a permitting system. They impose a requirement on a person operating a regulated facility, or causing or knowingly permitting a water discharge activity or groundwater activity, to obtain a permit and comply with its terms. Regulated facility is defined to include amongst other things a waste operation; a mining waste operation; a radioactive substances activity; a water discharge activity; a groundwater activity; a small waste incineration plant; a solvent emission activity; and

a flood risk activity. The EA is the agency primarily charged with the issue, enforcement, suspension and revocation of such permits, which it must periodically review, making periodic inspections of regulated facilities.

21. Regulation 38 creates various offences, including operating a regulated facility without a permit and failing to comply with the terms of a permit. Of potential relevance to the current dispute are Regulation 38(4)(b) which makes it an offence knowingly to make a false or misleading statement in purported compliance with a requirement to provide information imposed by the Regulations; Regulation 38(4)(c) which makes it an offence intentionally to make a false entry in a record required to be kept under an environmental permit condition; Regulation 38(6) which criminalises a person where an offence is committed by another due to the latter's "act or default"; and Regulation 41, which applies only to bodies corporate, and renders an officer guilty of an offence if the body corporate has committed an offence under the Regulations with their consent or connivance, or through their neglect.

22. I pause to observe that the EA has a wide range of functions in different areas of environmental regulation. They are not limited to pollution control or wastewater management but extend much more widely over many aspects of aquatic and terrestrial land use and resource management, for business and recreational use, as well as environmental protection and enhancement. By no means all of these are subject to the permitting regime or affected by the Permitting Regulations, which in any event did not come into existence until well after the 1995 Act was passed. The construction of s. 37(1) must be tested by reference to the full range of the EA's functions.

Analysis

23. I would reject Mr Marshall's primary argument that the hanging phrase in s. 37(1) confers authority on the EA to prosecute for any offence irrespective of whether it is, in its opinion, incidental to any of its functions. I would do so for three main reasons.

24. First, Mr Marshall's starting point, that the EA has the common law power to bring a private prosecution and s. 37(1) therefore falls to be addressed by reference to whether it restricts that power, is mistaken. At common law the general position is that every person has a right to bring a private prosecution and for this purpose a person includes a body corporate: see *Gouriet v Union of Post Office Workers* [1978] AC 435, 497H; Prosecution of Offences Act 1985 section 6; and *R v Rollins* at [8]-[9]. However, a body corporate may do so only to the extent that it is permitted to do so by the instrument which gives it the power to act (*R v Rollins* at [9]). In the case of an ordinary company this will be its memorandum and articles of association. In the case of a body created by statute it will usually be the statute creating such body. It is well established that where an Act of Parliament establishes a corporation for a specific purpose and confers powers for that purpose, any action not expressly or implicitly authorised by the Act is prohibited; but that in the absence of express provision, it is normally implicit that such body can do anything which is necessary for, reasonably incidental to or consequential upon the performance of its functions: see *The Ashbury Railway Carriage and Iron Company v Richie* (1875) LR 7 HL 653 and *AG v Great Eastern Railway Company* (1880) 5 App Cas 473; *Hazell* at p. 29; *ICI v Police Federation* at [15], [28]. For convenience I shall sometimes use "incidental to" as a shorthand for these different formulations, and also do so as a shorthand for the three formulations in s. 37 of the 1995 Act of anything which "is calculated to facilitate, or is conducive or

incidental to, the carrying out of its functions", which is the shorthand adopted in the heading to section 37, whilst recognising that there are three separate concepts and that the shorthand is not strictly accurate.

25. In relation to the institution of criminal proceedings by the EA, the power is expressly addressed in s. 37 of the statute creating it and defining its functions. There is no room for any implicit power to prosecute outside the terms of that express authority. Parliament cannot have intended to legislate in s. 37 merely permissively by providing an express power to prosecute in certain circumstances and leaving a further power to prosecute in other cases to be implied, especially as the section covers the same territory as the common law implied power for statutory bodies to do things which are incidental to their functions, in the same way as section 111 of the Local Government Act does for local authorities (*Hazell* at p. 29E; *McCarthy & Stone* at p. 68C-E).

26. This aspect of Mr Marshall's argument derives no support from *R v Rollins*, which was concerned with the power of the Financial Services Authority ('FSA') to prosecute for offences contrary to sections 327 and 328 of the Proceeds of Crime Act 2002. The argument was that the Financial Services and Marketing Act 200), as amended, ('FSMA') provided a complete code as to the FSA's prosecutorial powers and confined them to offences under sections 401 and 402 of FSMA. In rejecting the argument, Lord Dyson JSC, delivering the judgment of the Supreme Court, explained at [7]-[14] that the FSA had the same power as a private individual to prosecute the POCA offences prior to FSMA coming into force, so that the relevant question was whether FSMA removed that power. The FSA had that power as a private individual because it was not a statutory body but rather a company limited by guarantee incorporated (as the Securities and Investments Board) in 1985 with a memorandum and articles, which did not limit its power to prosecute for those offences. By contrast the EA is a statutory body, and its powers to prosecute are to be found in, and only in, s.37 of the Act creating it and defining its functions.

27. The issue in this case is, therefore, simply what s. 37 means, without any background of the EA having common law powers of prosecution apart from the section.

28. Secondly Mr Marshall's primary case on interpretation is contrary to the clear language of the section. It comes under the heading "Incidental general functions". Headings are permissible aids to construction (see Bennion, Bailey and Norbury on Statutory Interpretation 9th edn. para 16.7). Mr Marshall's construction of the hanging phrase, which is that the prosecution powers do not have to be incidental to anything, is plainly inconsistent with this heading. More significantly, the hanging phrase clearly, in my view, uses "and" in a conjunctive sense. Were it intended to be a general and unlimited power of prosecution for any offence one would not expect to find it appended as a hanging phrase to a section dealing solely with incidental functions. It would be drafted as a separate and free standing function or power.

29. It is understandable that the section should have been drafted in this way because it obviously owes its origins to s. 4 Water Resources Act 1991, in which it is beyond argument that the power conferred on the NRA to bring criminal proceedings was limited to those for the purposes of, or in connection with, the carrying out of its functions. The need for an adjustment to the structure of the section arose from the fact that whilst s. 4 of the 1991 Act was addressed solely to incidental powers of the NRA, s. 37(1) of the 1995 Act is addressed to the incidental functions of both the EA and

SEPA. However, there are particular aspects of the prosecutorial regime in Scotland which would make it inappropriate for SEPA to have been conferred with prosecution powers. Therefore the incidental functions in s. 37(1) and (2) are conferred on both the EA and SEPA, but the power to prosecute is dealt with separately in the hanging phrase because it is confined to the EA and does not include SEPA.

30. Thirdly, it would be surprising if Parliament had intended to create a new state prosecutorial body in which the EA was expressly empowered to prosecute any offence, when it would not have the expertise to do so in many cases and against the background that the CPS was established in England and Wales by the Prosecution of Offences Act 1985. Against the background of the general principle that the powers of statutory bodies are confined to those which are expressly or implicitly conferred by statute, and that the implied powers are confined to those incidental to the fulfilment of their functions, one would expect very clear words if such was Parliament's intention.

31. However, I would accept Mr Marshall's alternative argument on the construction of s. 37: it enables the EA to prosecute for any offence of any nature in circumstances in which such a prosecution is capable of being calculated to facilitate, or conducive or incidental to, the carrying out of any of its functions; and where in the EA's opinion the prosecution is so facilitative or conducive or incidental. Here the word "functions" embraces all the duties and powers of the EA, the sum total of all the activities which Parliament has entrusted to the EA (see *Hazell* at p. 29F).

32. I would reject Mr Hodivala's argument for four main reasons.

33. First it is contrary to the language of the hanging phrase which is unlimited as to the offences for which the EA may prosecute. It is limited only by and to the extent of the conjunctive "and" which qualifies it only by the requirement that the prosecution must be incidental to its functions. Mr Hodivala's argument seeks to read into it words which are not there in three restrictive ways, namely by confining it to statutory offences, to statutory offences under environmental legislation within its area of responsibility, and to substantive commission of such statutory offences not other inchoate forms of committing such offences such as conspiracy or attempt. There is no warrant for implying any words of restriction into the general unrestricted language of the phrase, let alone such a convoluted one.

34. Secondly, it would produce unreasonable and anomalous results. There is a strong presumption in statutory construction that an absurd result is not intended, where "absurd" is here used to include results which are anomalous, illogical, artificial or unreasonable: see generally Bennion, Bailey & Norbury 9th edn. Chapter 13 and the cases there cited.

35. Take first the suggested limitation to environmental statutory offences. The consequence would be that the EA could not prosecute for criminal damage to any of the land, waterways or facilities for which it was responsible, even if it comprised deliberate pollution or sabotage of flood defences; or for burglary, theft or obtaining by deception in relation to any of its property, or that of persons on its properties or conducting its functions, or of those conducting operations within its sphere of responsibility such as fisheries. If there were an escape from agricultural land which damaged the environment, the EA could not prosecute for criminal nuisance. It could not prosecute for gross negligence manslaughter in relation to management of the

environment within its sphere of responsibilities. If an employee committed an assault at work, it could not prosecute. If an employee were assaulted by a member of the public when carrying out EA functions it could not prosecute. It could not prosecute for blackmail for a ransom cyber-attack on its computer systems. One could posit numerous further examples which would produce anomalous results.

36. Consider then the supposed exclusion of inchoate offences in respect of statutory environmental offences. If a person committed a statutory environmental offence, by, for example, dumping toxic waste in a river, the EA could prosecute that person. But if a number of people agreed to do so, the EA could not prosecute any of them if their plan were thwarted before it was carried out. Yet the same policy considerations of deterring the conspirators and others by prosecuting would be present in each case. Moreover, in such a conspiracy which was not thwarted but carried out, the EA could not, on Mr Hodivala's argument, prosecute any of those involved save for the person who carried out the plan and committed the substantive offence himself. I can understand why Mr Hodivala was driven by the logic of his argument to exclude not only conspiracies but all forms of accessory liability. There is, however, no logical or practical sense in drawing distinctions between principal and secondary offenders.

37. I have drawn attention to the absurdity of the results which stem from the ramifications of Mr Hodivala's argument in a small sample of hypothetical cases. But the anomaly is apparent in the very facts of the present case. If there was an agreement of the kind and on the scale alleged by the EA in this case, at a high level, by which regulators with a public duty to act in a particular way were dishonestly induced to act in a way which they would not have done if they had known the true picture, that would on the face of it be an appropriate case to charge conspiracy to defraud (with a maximum sentence of 10 years' imprisonment). Paragraph 7 of the Attorney General's Guidelines says that conspiracy to commit a substantive offence should be charged, provided there is no wider dishonest objective that is important in reflecting the gravity of the case. That exception applies here on the facts alleged. Mr Hodivala advances no positive case that conspiracy to defraud is an inappropriate charge. The evidence that would go to support it, however, is essentially the same as the evidence which would be called if the case were simply charged as substantive offences of breaching regulatory provisions. Mr Hodivala positively asserts that the EA could have charged the conduct alleged as a statutory environmental offence or offences under Regulation 38(4)(b) and/or 38(4)(c) and/or 41 of the Permitting Regulations. It is therefore a striking and anomalous feature of the current application that in an area of activity which is peculiarly within that entrusted by Parliament to the EA, it is said that the EA cannot bring the charge in circumstances in which (1) it is at this stage to be taken to be an appropriate charge to reflect the gravity of the offending, and one which could properly be brought by the CPS or SFO (2) the evidence to support it is peculiarly within the knowledge and expertise of the EA which has carried out the extensive investigation and (3) the EA could have deployed substantially the same evidence to prosecute for some offences, but not for the offence which would properly reflect the gravity of the offending. Of course if that were the inescapable conclusion from clear language in which Parliament's intention was expressed, the Court would be bound to give effect to it. But the clear language in fact supports the sensible and reasonable contrary conclusion, not the anomalous one for which Mr Hodivala contends.

38. Thirdly, Mr Hodivala's formulation that the power extends to substantive statutory environmental offences but not "conspiracies, financial crime, dishonesty or fraud" is internally inconsistent and incoherent. Section 110(3) is a statutory environmental offence of falsely pretending to be an authorised person investigating environmental offences by exercising the powers under s. 108. That is an offence of dishonesty and fraud. So too is an offence contrary to Regulation 38(4) of the Permitting Regulations of knowingly or recklessly making a false statement in purported compliance with a request for information or for the purposes of obtaining the grant of an environmental permit. These and other statutory offences will usually be committed for a financial motive and constitute "financial crime". Regulation 41 makes an officer liable for an offence where they connive with the company in the company committing it. In most cases that will amount to a conspiracy between two legal persons (although there may perhaps be room for connivance in this statutory sense being something falling short of what is necessary for an agreement for conspiracy, on which I express no view).

39. Fourthly, the elaborate edifice on which Mr Hodivala sought to build his argument falls down in numerous places. It comprised a number of strands which require unpicking. First, he was keen to emphasise that the passing of the Act in 1995 was surrounded by controversy in relation to the common law offence of conspiracy to defraud. He referred us to the Report of the Roskill Committee on Fraud Trials published in 1986 which contained certain criticisms and recommended that they be looked into by an appropriate law reform agency. The relevant history before and since the 1995 Act is summarised in the Supreme Court decision in *R v Hayes & Palombo* [2025] UKSC 29 [2025] 1 W.L.R. 3553 at [48]:

> "When a statutory offence of conspiracy was created by section 1 of the Criminal Law Act 1977, the common law offence was for the most part abolished by section 5(1) of that Act. But conspiracy to defraud was preserved: see section 5(2). The offence is controversial and has been criticised as excessively broad and vague and incompatible with the principle that the law should be sufficiently certain to enable a person to know what conduct will amount to a crime: see eg Smith, Hogan and Ormerod's Criminal Law, 17th ed (2024), pp 493, 501-503. The Law Commission recommended the abolition of the offence as part of a draft Bill which became the Fraud Act 2006, describing conspiracy to defraud as an "indefensible anomaly": see Law Commission, Fraud (2002), Law Com No 276, paras 1.4, 3.2-3.5, 9.6. But the government decided to retain the offence "for the present" (see Fraud Law Reform - Government Response to Consultations, November 2004, para 45), and it remains available to prosecutors subject to guidelines on its use published by the Attorney General."

40. None of this assists Mr Hodivala's argument. The 1995 Act was passed against the background of Parliament's decision in 1977 to retain the common law offence of conspiracy to defraud. At the time of the passing of the 1995 Act, the Roskill Report had not recommended that the offence be abolished, but merely that it be considered by law reform agencies. The Law Commission recommendation that it be abolished came some seven years after the 1995 Act was passed and was rejected by Parliament, and the common law offence remains a recognised criminal offence which may properly be prosecuted in accordance with the Attorney General's Guidelines. Mr Hodivala advanced no argument that the criteria in the Attorney General's Guidelines were not fulfilled in the present case. For present purposes that must be taken to be an

appropriate charge, subject to the question of who is authorised to bring it. In any event, Mr Hodivala's construction is not dependent on the fact that the particular offence charged in this case is the common law offence of conspiracy to defraud; it is aimed at constraining the EA's authority to prosecute for all common law offences and most statutory offences. There is no warrant for assuming that Parliament had the common law offence of conspiracy to defraud in mind when s. 37 was framed or passed into legislation.

41. The next strand in Mr Hodivala's argument was reliance on the limited powers of investigation in s. 108, being confined to investigation of pollution enactments in relation to pollution functions defined as those related to specific statutes and regulations. As I understood the argument it was that this pointed to the power to prosecute being limited to offences under those enactments or regulations. There are a number of flaws in this reasoning. There is no warrant for concluding that the EA's powers of prosecution are confined by its powers of investigation. It may not need to make any of the kind of investigations identified in s. 108; whistleblowing provides an obvious example; and in any event there is no reason why powers of prosecution should be constrained by reference to powers of investigation. In *R v Rollins* Lord Dyson JSC rejected a similar argument in relation to the FSA, saying at [30]: "….the right of private prosecution does not depend on the enjoyment of corresponding powers of investigation, and it will frequently be the case that a private prosecutor lacks relevant statutory powers of investigation." Whilst that was said in the context of a private prosecutor it is equally true of statutory bodies with powers of prosecution. Moreover s. 108 is concerned with only one part of the EA's functions namely pollution control. Section 108 can have no bearing on its powers to prosecute in relation to the generality of its functions. Further, as Mr Hodivala accepted when put to him in argument, s. 108 does not cover investigation of offences under s. 110 of the Act, which are not in pollution enactments as defined. Yet on his case the EA does have power to prosecute for offences contrary to s. 110, as indeed they obviously must.

42. The next strand in the argument was that the function of prosecuting for statutory environmental offences was one of the incidental functions conferred by s. 37(1)(a); any claimed power to be able to prosecute for other offences could only therefore be an incidental power to an incidental power, which a statutory body cannot have. If I understood the argument correctly it was that there was a distinction between a primary incidental function, which was the "anything" in the third word of s. 37(1)(a) and a secondary incidental power, which was the power to institute criminal proceedings in the hanging phrase. I have done my best to articulate this point in grammatical language but in fact it was expressed in a way which I struggled to understand as linguistically coherent. The way Mr Hodivala articulated it was that the "anything" was the offences, by which he meant the statutory environmental offences. This was linguistically incoherent, as was pointed out in argument, because offences are something committed by persons other than the EA whereas functions, including the "anything" constituting an incidental function, refer to some activity or responsibility of the EA. Despite being pressed Mr Hodivala failed to express in clear words the link for which he was contending between "offences" and "functions", but I can only make sense of the argument if what he meant was "prosecution of offences", meaning prosecutions confined to statutory environmental offences.

43. There are numerous problems with this linguistic contortion. First, and fundamentally, if the "and" in the hanging phrase is conjunctive, it is that which makes the bringing of proceedings, of any kind, the "anything" which is permitted by subsection (1)(a) i.e. to the extent that in the EA's opinion it is incidental (using the shorthand) to its functions. Its conjunctive nature is to link the bringing of all criminal proceedings with the "anything", so as to make them something which are incidental to the EA's functions. There is a single link between the hanging phrase and the terms of subsection (1)(a), not two separate stages in which commencing some criminal proceedings can be regarded as within subsection (1)(a) without reference to the hanging phrase, and the commencement of other criminal proceedings which can be analysed as being secondarily incidental to that first set of prosecutorial powers. Moreover, it seems to me to be an abuse of language to describe the prosecution of offences other than statutory environmental offences as "incidental" to the prosecution of statutory environmental offences. If the primary incidental power is confined, as Mr Hodivala suggests, to prosecuting for statutory environmental offences, how is prosecuting for a different common law offence incidental to it at all? It is prosecution for a separate and different offence which does not support or enhance the prosecution for the statutory environmental offence. Further, I can see no rational explanation for the basis of Mr Hodivala's argument that the primary incidental function relied on is *prosecuting* for statutory environmental offences. It is not in the statutes creating the environmental offences, which do not themselves identify who is to prosecute them. That is why Mr Hodivala says that it arises as an incidental function under subsection (1)(a). But if it is a function created by subsection (1)(a), which is expressed as *anything* incidental to EA functions, and that includes prosecutions, why should it be confined to statutory environmental offences when the functions of the EA, its powers, duties and the activities entrusted to it by Parliament are not confined to those statutory offences? If the "anything" in subsection (1)(a) includes the power to prosecute irrespective of the hanging phrase, why is it not a power to prosecute for any offence which is incidental to the EA's functions? Mr Hodivala's argument has no answer to this question.

44. Mr Hodivala's structure is further undermined by the fact that if the "anything" in subsection (1)(a) encompasses a power to institute criminal proceedings independently of the hanging phrase, the hanging phrase would be superfluous: all that would be necessary would be to decide what kind of proceedings fell within "anything", which the argument treats as including the power to commence at least some criminal proceedings; to which the answer would simply be those that are incidental to the EA's functions which is the test imposed by subsection (1)(a). Again, the two stage structure collapses on itself.

45. I have dealt with this strand of the argument at greater length and with a greater degree of elaboration than it deserves out of deference to Mr Hodivala's elaborate argument. But the short point is that as a matter of language the conjunctive nature of the hanging phrase and its unqualified nature simply mean as a matter of natural language that there is a single link, which is that the power is to bring proceedings for any offence provided that it is incidental (to use the shorthand) to one of the EA's functions.

46. That renders it unnecessary to determine whether the authorities upon which Mr Hodivala relied support the existence of a general principle that a statutory body cannot have a power which is incidental to an incidental power. I am myself doubtful whether they support such a principle of universal application. The high water mark is to be

found in the speech of Lord Lowry in *McCarthy & Stone* at p74H to 75A as a "yet further point to which I have already adverted", having referred to the point as an argument which was "not a novelty" at p70D-E. That case was concerned with the nature of money-raising powers, which have a special status given the constitutional background of their being jealously guarded by Parliament, so that there is a requirement for express wording if they are to be treated as having been conferred on a branch of the executive. The main focus of the reasoning was a rejection of the argument that s. 111(1) of the Local Government Act could be interpreted to allow a local authority to charge for any obligatory or discretionary services which it was part of its functions to provide: p74E-H. I would observe that were there any general principle that a statutory body cannot have a power which is incidental to an incidental power, it would have been a short answer to the local authority's argument in *Hazell* that it had a power to enter into swaps as incidental to its incidental power of borrowing. However, the House of Lords in *Hazell* did not reject the argument on the basis of any such principle, despite the Court of Appeal having identified the "incidental to the incidental" argument in terms at [1990] 2 QB 679, 724, but rather on the basis of a detailed analysis leading to the conclusion that entering into swaps was not incidental to borrowing in that case.

47. A further strand of Mr Hodivala's argument emerged in his reply, relying on the Regulatory Enforcement and Sanctions Act 2008, Part 3 of which enables delegated legislation to confer on regulators and others a power to impose civil sanctions in the form of fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings. For designated regulators, of which the EA is one, they are authorised only in relation to "a relevant offence" which is one in respect of which it has "an enforcement function" and which is "contained in an Act" in force when the 2008 Act comes into force. There is further provision for delegated legislation to be able to include future statutory offences as relevant offences. Enforcement function is defined in s. 71:

> " "enforcement function", in relation to an offence, means a function (whether or not statutory) of taking any action with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where the offence is committed;"

48. This was said to support the argument that the EA could only prosecute for statutory environmental offences. In my view it provides no such support for several reasons. It is enabling legislation delegating an ability to *expand* the powers of the EA and other regulators (and non-regulators) in relation to the imposition of civil sanctions. That is not indicative of a *restriction* on any existing powers, such as a power to prosecute. Moreover, the civil sanctions may relate to offences under *any* enactment (which would include, for example, a conspiracy to commit any common law offence under s. 1 of the Criminal Law Act 1977). The definition of "enforcement function" does not limit them to statutory environmental offences unless in relation to other offences there is no power to prosecute or take any other action of any kind with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where the offence is committed. At best this simply begs the question as to the width of the enforcement function which s. 37(1) confers, by assuming what it sets out to prove. In any event this was enabling legislation enacted over 20 years after s. 37 of the 1995 Act was enacted. Inferences as to the correct construction of an Act can only be drawn from a

subsequent Act where the meaning is ambiguous and where it is clear that the subsequent Act proceeds on a particular interpretation of the earlier Act: see Bennion, Bailey & Norbury 9th edn. at section 14.18. In this case the meaning of s. 37(1) of the 1995 Act is not ambiguous; and it would be fanciful to treat Parliament in 2008 as having proceeded on any interpretation of that section in an Act concerned with delegated powers to impose civil sanctions for a wide range of regulators and non-regulators.

Conclusion on the application for permission to seek judicial review

49. For these reasons I would conclude that the Judge was correct to hold that the EA has power to prosecute C and the Interested Parties for conspiracy to defraud at common law. My reasoning is not very different from that given by the Judge, although I have preferred to express it in my own language in addressing the arguments as they were presented to us. I have reached this conclusion without any real hesitation, and despite the skilful and imaginative argument of Mr Hodivala, I do not regard the application for judicial review as arguable. Accordingly, I would refuse permission.

Anonymity

50. Ms Sjøvoll, who argued this part of the case on behalf of C, made clear that if the decision on the judicial review application was to refuse permission or dismiss the application C would not be entitled to anonymity. Accordingly, the anonymity order must be set aside. Since the matter was fully argued, I should explain why I would have refused anonymity whatever the outcome of the application and even if the application had been successful and the decision of the Judge overturned.

51. The anonymity order made by Mansfield J on 13 November 2025 ('the Anonymity Order') was in the conventional form comprising two parts:

(1) an order under the Court's inherent jurisdiction and pursuant to s. 6 Human Rights Act 1998 that C's name be withheld from the public and that he be referred to by the cypher "CVB"; and

(2) an order pursuant to s. 11 Contempt of Court Act 1981 that there be no publication of his identity or any matter likely to lead to his identification in any report of or otherwise in connection with these proceedings.

The law

52. The most helpful of many authorities in this area are four recent cases drawing on earlier authority, namely *Khuja v Times Newspapers Ltd* [2017] UKSC 49 [2019] AC 161; *R (Rai) v Winchester Crown Court* [2021] EWCA Civ 604 [2021] 2 Cr App R 20 400; *ZXC v Bloomberg LP* [2022] UKSC 5 [2022] AC 1158; and *R (Marandi) v Westminster Magistrates' Court* [2023] EWHC 587 (Admin) [2023] 2 Cr App R 15 215. The principles, so far as relevant to the present issue, can be summarised as follows (I have included only some of what could be many references in the authorities):

(1) The starting point is the common law principle of open justice authoritatively expounded in *Scott v Scott* [1913] AC 417. The general rule is that the administration of justice must be done in public: the public and the media have

a right to attend all court hearings and the media is able to reports those proceedings fully and contemporaneously (*Khuja* at [12], [16], *Marandi* at [43(1]) and *Rai* at [22]-[23]). That generally includes the mention of names: as a rule the public has a right to know not only what is going on in the courts but who the principal actors are (see e.g. *Marandi* at [43(2)]).

(2) This reflects two strong public interests enshrined in rights of freedom of expression in article 10 of the European Convention of Human Rights ('ECHR'). One is journalistic freedom of expression which applies to all media reporting, to which questions of the public interest are given particular prominence by s. 12(4) Human Rights Act 1998. This reflects the role of a free press in a democratic society to act as a "watchdog" and "bloodhound" (see e.g. *ZXC* at [59]-[62]). The second is specific to Court proceedings and is the public interest in open justice by reason of the value of public scrutiny as a guarantor of the quality of justice so as to promote public confidence in the administration of justice (see *Khuja* at [13] and ZXC at [77]).

(3) Accordingly, any restriction on open justice can only be justified if truly exceptional and strictly necessary, and the justification must be established by "clear and cogent evidence" (*Rai* at [10(3)], [19], [29], [35], *Marandi* at [43(6)].) It is not that rights under article 8 and article 10 of ECHR have any intrinsic priority over the other, but rather that the weight to be accorded to the article 10 rights involved in the principle of open justice is very considerable (*Rai* at [26]).

(4) This approach applies in relation to all court proceedings whether civil or criminal: *Marandi* at [36].

(5) In cases in which the individual relies on article 8 rights, there is a threshold question as to whether the individual has a reasonable expectation of privacy. There is a two-stage test, the first stage of which is whether article 8 rights are engaged at all. If they are not, there can be no justification for any restriction on publicity. Only if they are does the second stage arise of balancing article 8 and article 10 rights against one another (*ZXC* at [47], [77]).

(6) At this first stage, it is not enough in order for article 8 to be engaged that the individual will suffer damage to reputation as a result of publication. The injury to reputation must be sufficiently serious to amount to an interference with rights to a private life (*ZXC* at [55], [120]-[121]). A relevant question is the extent to which the information is in the public domain (*ZXC* at [54]); and the extent to which damage to reputation is the foreseeable consequence of criminal or other misconduct which has been established by a competent body (*ZXC* at [122]-[123]). The status of a businessman in a high profile role in a public company can diminish the weight to be attached to article 8 rights because such a person has a lesser expectation of privacy in relation to the affairs of the company: *ZXC* at [140].

(7) This first stage question is informed by a categorisation exercise which can provide a general rule or legitimate starting point for determining whether it is met. This is not a legal rule or presumption and does not obviate the need for a fact specific inquiry in each case or for the individual to establish by clear

and cogent evidence that objectively there is a reasonable expectation of privacy (*ZXC* at [52]-[53],[67]-[69].

(8) In this categorisation exercise as part of the first stage, there can be no reasonable expectation of privacy if a person is charged with a criminal offence (*ZXC* at [77]). By contrast the starting point is that an individual has a reasonable expectation of privacy in relation to the fact and content of police investigation of criminal offences prior to charge (*ZXC* at [80]-[99]).

(9) Factors which are relevant to whether the threshold first stage test is met can also affect the weight of the article 8 rights if the balancing exercise at stage two is reached. They may indicate that the article 8 rights are of reduced weight: *ZXC* at [77].

53. The evidence advanced by C in support of his anonymity application was contained in two witness statements, the first his witness statement of 20 October 2025 and a confidential annex, which was before Mansfield J and the second, dated 20 November 2025, also with a confidential annex, which post-dates the grant of the Anonymity Order by about a week. The latter expands upon the former but not to a very significant extent. C identifies his senior position in the Company, which he describes as "high profile" and the fact that he held it for what is the majority of the period covered by the alleged conspiracy. He describes the allegations, accurately, as allegations of very serious criminal misconduct. He explains that he has largely removed himself from any public facing roles and from any paid employment since the commencement of the criminal investigation by the EA as a result of that investigation, out of a fear of attracting publicity in the event of it being known that he was under investigation, both publicity for himself and his family and for any employer. He states that in the event he is identified in these judicial review proceedings it is inevitable that his reputation will be so badly damaged that it will effectively end any career prospects. He explains that there has already been extensive negative press reporting surrounding the Company and affecting him as a result of the investigation and report of Ofwat in 2019 which contained many of the allegations of wrongdoing which are covered by the conspiracy charge but which did not identify him as involved. C says in his witness statements that the publicity surrounding the Ofwat report was extremely intrusive for him, including approaches at his home address by the media which "placed extreme pressure on both me and my family".

54. Also of relevance is the fact that there was a successful criminal prosecution of the Company, in what was termed Operation Garden, for numerous serious pollution incidents which took place over a period of 6 years which largely overlapped with C's tenure of his high profile senior position at the Company. The Company pleaded guilty to 51 convictions in relation to almost 7,000 individual discharges. When sentencing the Company, Mr Justice Johnson said:

> "[31]: Nonetheless, I am satisfied so that I am sure that each of counts 1-50 was committed deliberately, in that there was an intentional breach of, or flagrant disregard for, the law by the Defendant's board of directors, and/or a deliberate failure by the board of directors to put in place and enforce such systems as could reasonably be expected in all the circumstances to avoid the commission of the offences.

[32] I reach that conclusion for the following reasons:

(1) The sheer scale of the offending over a 6 year period at 17 separate sites. It is inherently unlikely that this was due to a small number of rogue employees. It is far more likely to be due to deliberate disregard for the law from the top down.

(2) The evidence shows that many different employees, at site level, recognised the inadequacies of the sites and had reported these up the management chain, but to no avail. The number and nature of these reports is such that it is inconceivable that the company, at the highest level, was unaware of the problems.

(3) The board of directors must have been aware of the convictions against the company, particularly those that resulted in six figure fines. Yet, there is no evidence of remedial action being taken.

(4) The current chairman's evidence does not expressly explain the reasons for the offending, but it is entirely consistent with it being due to a culture inculcated by the then board of directors. Thus, he repeatedly emphasises how there has now been a complete culture change in the company. He does not anywhere suggest that the board of directors that was in place in 2010- 2015 was unaware of what was going on."

[33] For these reasons, I am sure that the board of directors knew that the systems that were in place were wholly inadequate to prevent unpermitted discharges of sewage into controlled waters, and yet it deliberately failed to put in place and enforce the systems that were reasonably required to avoid the offences. It thereby flagrantly disregarded the law."

Submissions

55. Ms Sjøvoll founded her submissions on the decision of the Supreme Court in *ZXC*. Without doing full justice to her argument, it can fairly be summarised as being that that case establishes that, as she put it, there is a tipping point when a person is properly charged. Thereafter, she accepted, there is a general rule that there will be no entitlement to privacy; by contrast there is a general rule that a person is entitled to privacy in respect of allegations and investigations prior to charge. Because the issue in this case is whether or not C has properly been charged, and the outcome of the judicial review, if successful, would be a finding that he had not been properly charged and there had been unlawful conduct by state authorities (the EA in laying the information and the Magistrates' Court in issuing the summons), in that eventuality he would be entitled to anonymity; and the anonymity should cover the judicial review proceedings in order to protect C's entitlement to anonymity in that potential outcome.

56. In assessing this argument it is necessary to identify in greater detail what *ZXC* was about. ZXC was a US citizen who worked for a company which operated overseas. He and his employer were the subject of a criminal investigation by a UK Legal Enforcement Body (the "UKLEB"). During that investigation, the UKLEB sent a confidential Letter of Request to the authorities of a foreign state seeking, among other things, information and documents relating to ZXC. The Letter expressly requested that its existence and contents remain confidential. Bloomberg, a well-known media company, obtained a copy of the Letter of Request, on the basis of which it published

an article reporting that information had been requested in respect of ZXC and detailing the matters in respect of which he was being investigated. After Bloomberg refused to remove the article from its website, and following an unsuccessful application for an interim injunction, ZXC brought a successful claim against Bloomberg for misuse of private information. ZXC claimed that he had a reasonable expectation of privacy in relation to: (1) the fact that the UKLEB had requested information relating to him in the context of its investigations, and (2) the details of the matters that the UKLEB was investigating in relation to him. The first instance judge held that Bloomberg had published private information which was in principle protected by article 8; and that in balancing ZXC's rights against those of Bloomberg under article 10, the balance favoured ZXC. Bloomberg's appeals were dismissed by the Court of Appeal and by the Supreme Court.

57. It is important to emphasise that the case was not involved with any question of open justice, but only journalistic reporting; that the issue related to the content of the Letter of Request and the allegations of potential criminality which it revealed were being investigated; and that in the balancing exercise the Court treated as particularly important the public interest in maintaining the confidentiality involved in the confidential Letter of Request quite apart from ZXC's article 8 rights.

58. The case does not stand as authority for a general rule that prior to charge an individual will be entitled to anonymity in relation to criminal investigations or allegations of criminal wrongdoing. The principles remain those I have identified above, in which that general rule, as a categorisation issue, is a legitimate starting point for the stage one question as to whether an individual has any sufficient expectation of privacy for their article 8 rights to be engaged at all. It does not dictate the outcome of that stage one issue, to which other considerations are relevant; nor does it dictate the outcome of the balancing exercise at stage two if it is reached. The case has nothing to say about that balancing exercise in the context of the open justice principle, which raises different considerations from mere journalistic freedom of expression which was the only article 10 consideration which arose in that case.

59. Applying the principles identified above, C's reliance on article 8 rights falls very far short of justifying departure from the open justice principle as a matter of necessity. Apart from the very high test of necessity involved, the following matters are particularly pertinent.

60. C has in fact been charged. In its evidence the EA explains that it considered the twin tests of sufficiency of evidence and public interest required by the Code for Crown Prosecutors and considered that they were met. In the judicial review proceedings C does not advance any positive case to the contrary. Indeed, it is positively asserted that the same conduct could have been charged by the EA under various parts of the Permitting Regulations. Rather, the issue which arises in the judicial review proceedings is simply whether the EA is the right person to have brought this particular charge in circumstances in which other public prosecutors could have done so and the EA could itself have prosecuted essentially the same criminality by charging different offences. It is the public reporting of that issue to which the open justice imperative attaches. The position is therefore quite unlike that in the paradigm case under consideration in *ZXC* of allegations of criminal conduct, or investigations of criminal conduct, which have not yet reached the threshold of having been determined to be sufficiently supported by evidence to justify charging.

61. Where a charge has been brought, the general rule is that there is no expectation of privacy and article 8 rights are not engaged. That applies to stages of the proceedings in which a defendant may challenge a prosecution as improperly commenced for any one of a number of reasons, whether on sufficiency of evidence, defects in the charges, procedural errors, arguments of law as to the ingredients of the offence or abuse of process. The issue in this case is analogous to those examples, some of which would lead to the quashing of charges or a stay rather than an acquittal.

62. Moreover, there is an especially important reason for the issue which arises in this case to be reported because failing to report it would result in speculation in which the public might well be misled. They might well conclude that despite having conducted the investigation and prosecuted others, the EA had not prosecuted C through timidity or incompetence or because there was no sufficient evidence of his involvement in criminality, whereas the true reason would be, on the hypothesis being considered, merely that it lacked statutory power to do so. It was suggested in argument that the injury to C's article 8 rights would arise from the public's perception that the charge had been quashed "on a technicality". But it is the very nature of that "technicality", on which C is relying in these proceedings, which renders it important that the public should understand that that is the only basis on which the charge is being challenged.

63. C's evidence of the effect of publicity on him if the fact and detail of the charge were revealed involves no more than a general assertion of damage to his reputation from publication. The suggestion that it affects his employment prospects is undermined by his evidence that he has voluntarily refrained from seeking employment as a result of the EA investigation. As to his reputation, it is already adversely impacted by the Ofwat report and the result of Operation Garden to a significant extent. Although neither the Ofwat report nor Mr Justice Johnson's sentencing remarks identified him specifically as complicit in the criminal activity involved, his senior position at the company inevitably means that his personal reputation will have been significantly diminished. So far as his rights to private life are concerned, it is clear that irrespective of this prosecution they are already impaired by his high profile role at the Company which has been subjected to the criticisms of the Ofwat report, which has engendered the approaches to his home by the media irrespective of the EA investigation or charging, and no doubt by the publicity surrounding the Operation Garden offences of the Company. The weight to be attached to C's privacy rights in relation to the affairs of the company is further diminished by the fact that he had a high profile senior role in relation to a major public utility company whose performance of its functions was the subject matter of considerable press and public criticism and scrutiny quite apart from allegations of criminality. There is no clear and cogent evidence that any injury to his reputation from reporting of the case would be sufficiently serious to amount to an interference with rights to a private life.

64. In these circumstances I would hold that C's expectation of privacy does not reach the threshold at stage one of having article 8 rights which are engaged; but if it does, they are of little weight by comparison with the imperative of open justice and clearly insufficient for it to be necessary to impose anonymity and restrict reporting.

Duty of candour

65. The Anonymity Order was made by Mansfield J as the immediates judge in the Administrative Court on paper without a hearing on 13 November 2025. The procedural background is as follows.

66. Following the promulgation of the Judge's decision on 18 October 2025, C issued his judicial review application on 20 October 2025 which included an application for an anonymity order to cover the judicial review proceedings, the justification for which was put forward in the attached Statement of Facts and Detailed Grounds and supported by C's first witness statement and confidential exhibit setting out his evidence in support of the anonymity order.

67. C also pursued an application to the Judge for a stay of proceedings and a reporting restriction order over the criminal proceedings pending the determination of the judicial review proceedings. This was refused by the Judge on 31 October 2025. On the same date the Judge adjourned the return date for the summons, previously listed for 4 November 2025, to 17 November 2025. It was anticipated that there would be media interest and coverage of the case at the return date.

68. On 6 November 2025 C issued an application in this Court for a stay of the criminal proceedings pending determination of the judicial review. It was supported by a witness statement of C's solicitor, Mr Shergold, seeking an urgent stay of the criminal proceedings pending conclusion of the judicial review proceedings. It asked that it be dealt with within 5 working days before any lists were published for the hearing scheduled on 17 November as the return date for the Summons (together with the summonses issued against other parties). Although Mr Shergold's witness statement was served specifically in support of the stay application, it was clear that it also affected the urgency of the application for interim relief for anonymity sought in the judicial review application itself because it referred to the history of the application to the Judge for anonymity and the requests for him to deal with it before the return date for the Summons at which media attendance and coverage was anticipated. As to that return date, Mr Shergold's statement revealed that the Judge had identified that one party had a difficulty with the 17 November hearing date and the Judge had asked the parties to seek to agree an alternative date, but that in the meantime the 17 November date remained unchanged.

69. On 10 November 2025 the Administrative Court Office sent an email to Ms Foster, who was the senior managing lawyer at the EA with conduct of the prosecution, requesting a response to C's application by 4 pm on 13 November 2025. This was sent at 12.45, and probably crossed with an email sent by Mr Keal of the EA to the Administrative Court Office 5 minutes later volunteering that the EA would serve its responsive evidence by 4 pm on Wednesday 12 November 2025. Mr Keal appears thereafter to have been working to the Court Office deadline not to his earlier deadline.

70. On 11 November 2025 the Judge notified the parties that the return date for the hearing of the Summons was adjourned to a date which the parties had agreed was convenient, namely 3 December 2025. Unfortunately, neither side told the Administrative Court Office of this development in time, as a result of which on Thursday 13 November 2025 Mansfeld J dealt with the application as an urgent one on the misunderstanding that the urgency arose from a forthcoming hearing on Monday 17 November at which there would be publicity in the absence of an anonymity order being made. In his reasons for granting a stay of the criminal proceedings and the Anonymity Order he said: "I can

do no more than make an order to hold the ring pending proper consideration of (a) permission to apply for judicial review and (b) the appropriateness of interim relief on an ongoing basis." He ordered that its continuation be considered when the application for permission to apply for judicial review was considered on paper.

71. The subsequent history is that on 20 November 2025 the EA issued its application to discharge the Anonymity Order for reasons set out in an accompanying skeleton argument. These were that, apart from its substantive objections to anonymity, the chronology I have recited involved a breach of a duty of candour on the part of C which resulted in the Judge being misled as to the urgency of the application, which could and should have been dealt with by prior notification to the media and full argument on the balancing exercise required to justify derogation from the principle of open justice.

72. When Sweeting J ordered the judicial review permission application to be dealt with as a rolled up hearing, the effect was that C needed to apply to the Court at the hearing for the anonymity order to be continued. Sweeting J also adjourned the Anonymity Order discharge application to be heard at the same time. It was argued before us at the outset of the hearing, and we reserved judgment in relation to it, making clear that the Anonymity Order remained in place in accordance with its terms until further order of the Court pending the outcome of the hearing. In resisting the continuation of the Anonymity Order and pursuing the discharge application Mr Marshall made clear that he did so in reliance on the breach of the duty of candour as well as addressing the underlying merits of the application.

Discussion

73. A claimant in judicial review proceedings is under a duty of candour to draw to the court's attention material matters, including matters which are material to questions of urgency when applying for urgent interim relief. As it is put in Sir Michael Fordham's Judicial Review Handbook 8th edn. at 10.3:

> "Judicial review claimants and their representatives are under an important continuing duty to make full disclosure to the court of material facts. … The pre-action and permission stages allow defendants and interested parties their own voice and opportunities. But the claimant's duty of candour remains. It is strongest in urgent cases and when interim remedies are being sought."

74. When approving the equivalent passage in an earlier edition, Sedley LJ said in *R (Khan) v Secretary of State for the Home Department* [2008] EWHC 1367 (admin) at [12]:

> "The counterpart is of course a duty on defendants which is at least as high."

75. The Administrative Court Office and Mansfield J were misled into treating the application as one of urgency by the failure to notify the Court that the position had changed on 11 November 2025. This was a breach of C's duty of candour and a serious one. The Court may discharge an order when there is a breach of the duty of candour even if the order might otherwise have been justified. In this case, it is doubtful whether Mansfield J would have made the Order as a matter of urgency had he known the true position. He might well have listed the matter for a hearing with notice to the media so that the privacy issue could be fully considered. The only explanation for the failure to notify the Court which has been put forward by C, in written argument rather than

evidence, is that it was still urgent for the application to be dealt with in advance of the listing of the return date on 3 December 2025 which would otherwise name C. That is not an excuse for failing to notify the Court of the position.

76. However, there was also a breach by the EA of its own duty of candour in failing to notify the Court promptly, although the primary blame lies with C. The EA did not draw the adjournment of the return date for the summons to the attention of the Court until the filing of its submissions on the afternoon of 13 November, which was too late for it to come to the attention of Mansfield J before whom the application was pending. The EA could and should have done so promptly after the adjournment on 11 November. In those circumstances I would not have treated C's breach as justifying setting aside the Anonymity Order if it were otherwise necessary to maintain it (which it is not).

Conclusion

77. I would refuse C's application for permission to apply for judicial review and set aside the Anonymity Order granted by Mansfield J so as to allow full reporting of these proceedings including C's identity.

Mr Justice Hilliard :

78. I agree.

ANNEX of Statutory Provisions

Local Government Act 1972 c. 70

111.— Subsidiary powers of local authorities.

(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

(2) For the purposes of this section, transacting the business of a parish or community meeting or any other parish or community business shall be treated as a function of the parish or community council.

(3) A local authority shall not by virtue of this section raise money, whether by means of rates, precepts or borrowing, or lend money except in accordance with the enactments relating to those matters respectively.

(4) In this section "local authority" includes the Common Council.

Water Resources Act 1991 c. 57

4.— Incidental general powers of the [Agency][1] .

(1) The [Agency] —

(a) shall have power to do anything which, in the opinion of the [Agency] , is calculated to facilitate, or is conducive or incidental to, the carrying out of the [Agency's][1] functions; and

(b) without prejudice to the generality of that power, shall have power, for the purposes of, or in connection with, the carrying out of those functions, to institute criminal proceedings, to acquire and dispose of land and other property and to carry out such engineering or building operations at such places as the [Agency][1] considers appropriate.

…

84.— General duties to achieve and maintain objectives etc.

(1) It shall be the duty of the Secretary of State and of the [Agency] to exercise the powers conferred on him or it by or under the water pollution provisions of this Act (other than the preceding provisions of this Chapter and sections 104 and 192 below) in such manner as ensures, so far as it is practicable by the exercise of those powers to do so, that the water quality objectives specified for any waters in—

(a) a notice under section 83 above; or

(b) a notice under section 30C of the Control of Pollution Act 1974 (which makes corresponding provision for Scotland),are achieved at all times.

(2) It shall be the duty of the [Agency], for the purposes of the carrying out of its functions under the water pollution provisions of this Act—

(a) to monitor the extent of pollution in controlled waters; and

(b) to consult, in such cases as it may consider appropriate, with [the Scottish Environment Protection Agency]

Environment Act 1995 c. 25

Establishment of the Agency

1.— The Environment Agency.

(1) There shall be a body corporate to be known as the Environment Agency or, in Welsh, Asiantaeth yr Amgylchedd (in this Act referred to as *"the Agency"*), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.

…

(5) Subject to the provisions of section 38 below, the Agency shall not be regarded—

(a) as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; or

(b) by virtue of any connection with the Crown, as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local;

and the Agency's property shall not be regarded as property of, or property held on behalf of, the Crown.

…

2.— Transfer of functions to the Agency.

(1) On the transfer date there shall by virtue of this section be transferred to the Agency—

(a) the functions of the National Rivers Authority, that is to say—

(i) its functions under or by virtue of Part II (water resources management) of the Water Resources Act 1991 (in this Part referred to as *"the 1991 Act"*);

(ii) its functions under or by virtue of Part III of that Act (control of pollution of water resources);

(iii) its functions under or by virtue of Part IV of that Act (flood defence) and the Land Drainage Act 1991 and the functions transferred to the Authority by virtue of section 136(8) of the Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation);

(iv) its functions under or by virtue of Part VII of the 1991 Act (land and works powers);

(v) its functions under or by virtue of the Diseases of Fish Act 1937, the Sea Fisheries Regulation Act 1966, the Salmon and Freshwater Fisheries Act 1975, Part V of the 1991 Act or any other enactment relating to fisheries;

(vi) the functions as a navigation authority, harbour authority or conservancy authority which were transferred to the Authority by virtue of Chapter V of Part III of the Water Act 1989 or paragraph 23(3) of Schedule 13 to that Act or which have been transferred to the Authority by any order or agreement under Schedule 2 to the 1991 Act;

(vii) its functions under Schedule 2 to the 1991 Act;

(viii) the functions assigned to the Authority by or under any other enactment, apart from this Act;

(b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—

(i) the Control of Pollution (Amendment) Act 1989, or

(ii) Part II of the Environmental Protection Act 1990 (in this Part referred to as *"the 1990 Act"*),

or assigned to them by or under any other enactment, apart from this Act;

(c) the functions of disposal authorities under or by virtue of the waste regulation provisions of the Control of Pollution Act 1974;

(d) the functions of the chief inspector for England and Wales constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment, apart from this Act;

(e) the functions of the chief inspector for England and Wales appointed under section 4(2)(a) of the Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment, apart from this Act;

(f) the functions conferred or imposed by or under the Alkali, &c, Works Regulation Act 1906 (in this section referred to as *"the 1906 Act"*) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to England and Wales;

(g) so far as exercisable in relation to England and Wales, the functions in relation to improvement notices and prohibition notices under Part I of the Health and Safety at Work etc. Act 1974 (in this section referred to as *"the 1974 Act"*) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as the enforcing authority responsible in relation to England and Wales for the enforcement of the 1906 Act and section 5 of the 1974 Act; and

(h) the functions of the Secretary of State specified in subsection (2) below.

(2) The functions of the Secretary of State mentioned in subsection (1)(h) above are the following, that is to say—

(a) so far as exercisable in relation to England and Wales, his functions under section 30(1) of the Radioactive Substances Act 1993 (power to dispose of radioactive waste);

(b) his functions under Chapter III of Part IV of the Water Industry Act 1991 in relation to special category effluent, within the meaning of that Chapter, other than any function of making regulations or of making orders under section 139 of that Act;

(c) so far as exercisable in relation to England and Wales, the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;

(d) so far as exercisable in relation to England and Wales, his functions under, or under regulations made by virtue, of, section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;

(e) so far as exercisable in relation to England and Wales, his functions under regulations 7(1) and 8(2) of, and paragraph 2(2)(c) of Schedule 2 to, the Sludge (Use in Agriculture) Regulations 1989 (which relate to the provision of information and the testing of soil).

(3) The National Rivers Authority and the London Waste Regulation Authority are hereby abolished.

….

4.— Principal aim and objectives of the Agency.

(1) It shall be the principal aim of the Agency (subject to and in accordance with the provisions of this Act or any other enactment and taking into account any likely costs) in discharging its functions so to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development mentioned in subsection (3) below.

…

5.— General functions with respect to pollution control.

(1) The Agency's pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.

(5) In this section, *"pollution control powers"* and *"pollution control functions"* , in relation to the Agency, mean respectively its powers or its functions under or by virtue of the following enactments, that is to say—

(a) the Alkali, &c, Works Regulation Act 1906;
(b) Part I of the Health and Safety at Work etc. Act 1974;
(c) Part I of the Control of Pollution Act 1974;
(d) the Control of Pollution (Amendment) Act 1989;
(e) Parts I, II and IIA of the 1990 Act (integrated pollution control etc, waste on land and contaminated land);
(f) Chapter III of Part IV of the Water Industry Act 1991 (special category effluent);
(g) Part III and sections 161 to 161D of the 1991 Act (control of pollution of water resources);
(h) the Radioactive Substances Act 1993;
(j) regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution.

…

6.— General provisions with respect to water

(1) It shall be the duty of the Agency, to such extent as it considers desirable, generally to promote—

(a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters;
(b) the conservation of flora and fauna which are dependent on an aquatic environment; and
(c) the use of such waters and land for recreational purposes;

and it shall be the duty of the Agency, in determining what steps to take in performance of the duty imposed by virtue of paragraph (c) above, to take into account the needs of persons who are chronically sick or disabled. This subsection is without prejudice to the duties of the Agency under section 7 below.

(2) It shall be the duty of the Agency to take all such action as it may from time to time consider, in accordance with any directions given under section 40 below, to be necessary or expedient for the purpose—

(a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
(b) of securing the proper use of water resources in England and Wales;

…

(4) Subject to section 106 of the 1991 Act (obligation to carry out flood defence functions through committees), the Agency shall in relation to England and Wales exercise a general supervision over all matters relating to flood defence.

…

(6) It shall be the duty of the Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.

…

7.— General environmental and recreational duties.

(1) It shall be the duty of each of the Ministers and of the Agency, in formulating or considering—

(a) any proposals relating to any functions of the Agency other than its pollution control functions, so far as may be consistent—

(i) with the purposes of any enactment relating to the functions of the Agency,
(ii) in the case of each of the Ministers, with the objective of achieving sustainable development,
(iii) in the case of the Agency, with any guidance under section 4 above,
(iv) in the case of the Secretary of State, with his duties under section 2 of the Water Industry Act 1991,

so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) any proposals relating to pollution control functions of the Agency, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest;

(c) any proposal relating to any functions of the Agency—

(i) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;
(ii) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and
(iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.

(2) Subject to subsection (1) above, it shall be the duty of each of the Ministers and of the Agency, in formulating or considering any proposals relating to any functions of the Agency—

(a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
(b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and
(c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(3) Subsections (1) and (2) above shall apply so as to impose duties on the Agency in relation to—

(a) any proposals relating to the functions of a water undertaker or sewerage undertaker,
(b) any proposals relating to the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a water undertaker or sewerage undertaker), and
(c) any proposal which by virtue of section 156(7) of the Water Industry Act 1991 (disposals of protected land) falls to be treated for the purposes of section 3 of that Act as a proposal relating to the functions of a water undertaker or sewerage undertaker,

as they apply in relation to proposals relating to the Agency's own functions, other than its pollution control functions.

(4) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes obstruction of, or other interference with, navigation which is subject to the control of that authority, it shall be the duty of the Agency to take such steps as are—

(a) reasonably practicable, and
(b) consistent with the purposes of the enactments relating to the functions of the Agency,

for securing, so long as the Agency has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(5) It shall be the duty of the Agency, in determining what steps to take in performance of any duty imposed by virtue of subsection (4) above, to take into account the needs of persons who are chronically sick or disabled.

(6) Nothing in this section, the following provisions of this Act or the 1991 Act shall require recreational facilities made available by the Agency to be made available free of charge.

(7) In this section—
"building" includes structure;
"pollution control functions" , in relation to the Agency, has the same meaning as in section 5 above.

…

9.— Codes of practice with respect to environmental and recreational duties.

(1) Each of the Ministers shall have power by order to approve any code of practice issued (whether by him or by another person) for the purpose of—

. . .

10.— Incidental functions of the Agency.

(1) This section has effect—

(a) for the purposes of section 37(1) below, as it applies in relation to the Agency; and

(b) for the construction of any other enactment which, by reference to the functions of the Agency, confers any power on or in relation to the Agency;

and any reference in this section to "the relevant purposes" is a reference to the purposes described in paragraphs (a) and (b) above.

(2) For the relevant purposes, the functions of the Agency shall be taken to include the protection against pollution of—

(a) any waters, whether on the surface or underground, which belong to the Agency or any water undertaker or from which the Agency or any water undertaker is authorised to take water;

(b) without prejudice to paragraph (a) above, any reservoir which belongs to or is operated by the Agency or any water undertaker or which the Agency or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and

(c) any underground strata from which the Agency or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the 1991 Act (abstraction and impounding).

(3) For the relevant purposes, the functions of the Agency shall be taken to include joining with or acting on behalf of one or more relevant undertakers for the purpose of carrying out any works or acquiring any land which at least one of the undertakers with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of—

(a) any function of that undertaker under any enactment; or

(b) any function which is taken to be a function of that undertaker for the purposes to which section 217 of the Water Industry Act 1991 applies.

(4) For the relevant purposes, the functions of the Agency shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of the Agency.

(5) For the relevant purposes, the functions of the Agency shall be taken to include the provision of houses and other buildings for the use of persons employed by the Agency and the provision of recreation grounds for persons so employed.

…

37.— Incidental general functions.

(1) Each new Agency (that is to say, in this Part, the Agency or SEPA)—

(a) may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions; and

(b) without prejudice to the generality of that power, may, for the purposes of, or in connection with, the carrying out of those functions, acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate;

and the Agency may institute criminal proceedings in England and Wales.

…

Powers of entry

108.— Powers of enforcing authorities and persons authorised by them.

(1) A person who appears suitable to an enforcing authority may be authorised in writing by that authority to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose—

(a) of determining whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with;

(b) of exercising or performing one or more of the pollution control functions of that authority; or

(c) of determining whether and, if so, how such a function should be exercised or performed.

(2) A person who appears suitable to the Agency or SEPA may be authorised in writing by the Agency or, as the case may be, SEPA to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose of enabling the Agency or, as the case may be, SEPA to carry out any assessment or prepare

any report which the Agency or, as the case may be, SEPA is required to carry out or prepare under section 5(3) or 33(3) above.

(3) Subsection (2) above only applies where the Minister who required the assessment to be carried out, or the report to be prepared, has, whether at the time of making the requirement or at any later time, notified the Agency or, as the case may be, SEPA that the assessment or report appears to him to relate to an incident or possible incident involving or having the potential to involve—

(a) serious pollution of the environment,

(b) serious harm to human health, or

(c) danger to life or health.

(4) The powers which a person may be authorised to exercise under subsection (1) or (2) above are—

(a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;

(b) on entering any premises by virtue of paragraph (a) above, to take with him—

(i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and

(ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

(c) to make such examination and investigation as may in any circumstances be necessary;

(d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;

(e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;

(f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;

(g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);

(h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that paragraph;

(ii) to ensure that it is not tampered with before examination of it is completed;
(iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control enactments in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those enactments;

(j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;

(k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
(i) which are required to be kept under the pollution control enactments for the enforcing authority under whose authorisation he acts, or
(ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,

and to inspect and take copies of, or of any entry in, the records;

(l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section;

(m) any other power for—
(i) a purpose falling within any paragraph of subsection (1) above, or
(ii) any such purpose as is mentioned in subsection (2) above,
which is conferred by regulations made by the Secretary of State.

(15) In this section—…
"enforcing authority" means —
(a) the Secretary of State;
(b) the Agency;
(c) SEPA; or
(d) a local enforcing authority;

..
"pollution control enactments" , in relation to an enforcing authority, means the enactments and instruments relating to the pollution control functions of that authority;

"pollution control functions" , in relation to the Agency or SEPA, means the functions conferred or imposed on it by or under—
(a) the Alkali, &c, Works Regulation Act 1906;
(b) Part III of the Rivers (Prevention of Pollution) (Scotland) Act 1951;
(c) the Rivers (Prevention of Pollution) (Scotland) Act 1965;
(d) Part I of the Health and Safety at Work etc. Act 1974;

(e) Parts I, IA and II of the Control of Pollution Act 1974;
(f) the Control of Pollution (Amendment) Act 1989;
(g) Parts I, II and IIA of the Environmental Protection Act 1990 (integrated pollution control, waste on land and contaminated land);
(h) Chapter III of Part IV of the Water Industry Act 1991 (special category effluent);
(j) Part III and sections 161 to 161D of the Water Resources Act 1991;
(k) section 19 of the Clean Air Act 1993;
(l) the Radioactive Substances Act 1993;
(m) regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;

…

110.— Offences.

(1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.

(2) It is an offence for a person, without reasonable excuse,—
(a) to fail to comply with any requirement imposed under section 108 above;
(b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the execution of his powers or duties under or by virtue of that section; or
(c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to subsection (4) of that section.

(3) It is an offence for a person falsely to pretend to be an authorised person.

(4) A person guilty of an offence under subsection (1) above shall be liable—
(a) in the case of an offence of obstructing an authorised person in the execution of his powers under section 109 above—
(i) on summary conviction, to a fine not exceeding the statutory maximum;
(ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both;
(b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(5) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) In this section—
"authorised person" means a person authorised under section 108 above and includes a person designated under paragraph 2 of Schedule 18 to this Act;
"powers and duties" includes powers or duties exercisable by virtue of a warrant under Schedule 18 to this Act.

Pollution Prevention and Control Act 1999 c. 24

1.— General purpose of section 2 and definitions.

(1) The purpose of section 2 is to enable provision to be made for or in connection with—

(a) implementing Council Directive 96/61/EC concerning integrated pollution prevention and control;

(b) regulating, otherwise than in pursuance of that Directive, activities which are capable of causing any environmental pollution;

(c) otherwise preventing or controlling emissions capable of causing any such pollution.

(2) In this Act—

"activities" means activities of any nature, whether—

(a) industrial or commercial or other activities, or

(b) carried on on particular premises or otherwise,

and includes (with or without other activities) the depositing, keeping or disposal of any substance;

"environmental pollution" means pollution of the air, water or land which may give rise to any harm; and for the purposes of this definition (but without prejudice to its generality)—

(a) *"pollution"* includes pollution caused by noise, heat or vibrations or any other kind of release of energy, and

(b) *"air"* includes air within buildings and air within other natural or man-made structures above or below ground.

(3) In the definition of "environmental pollution" in subsection (2), *"harm"* means—

(a) harm to the health of human beings or other living organisms;

(b) harm to the quality of the environment, including—

(i) harm to the quality of the environment taken as a whole,

(ii) harm to the quality of the air, water or land, and

(iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;

(c) offence to the senses of human beings;

(d) damage to property; or

(e) impairment of, or interference with, amenities or other legitimate uses of the environment (expressions used in this paragraph having the same meaning as in Council Directive 96/61/EC).

2.— Regulation of polluting activities.

(1) The Secretary of State may by regulations make provision for any of the purposes listed in Part I of Schedule 1; and Part II of that Schedule has effect for supplementing Part I.

(2) In accordance with subsection (1) of section 1, the provision which may be made by regulations under this section is provision for or in connection with any of the matters mentioned in paragraphs (a) to (c) of that subsection.

(3) Regulations under this section may—

(a) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State considers appropriate; and

(b) make different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities.

(4) Before making any regulations under this section, the Secretary of State shall consult—

(a) the Environment Agency if the regulations are to apply in relation to England or Wales;

(b) the Scottish Environment Protection Agency if the regulations are to apply in relation to Scotland;

(c) such bodies or persons appearing to him to be representative of the interests of local government, industry, agriculture and small businesses respectively as he may consider appropriate; and

(d) such other bodies or persons as he may consider appropriate.

(5) Consultation undertaken before the passing of this Act shall constitute as effective compliance with subsection (4) as if undertaken after that passing.

(6) The power to make regulations under this section shall be exercised by statutory instrument.

(7) A statutory instrument containing regulations under this section, if made without a draft having been laid before, and approved by a resolution of, each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House.

(8) No regulations to which this subsection applies shall be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(9) Subsection (8) applies to—

(a) the first regulations to be made under this section which apply in relation to England;

(b) the first regulations to be made under this section which apply in relation to Wales;

(c) the first regulations to be made under this section which apply in relation to Scotland;

(d) regulations under this section which create an offence or increase a penalty for an existing offence;

(e) regulations under this section which amend or repeal any provision of an Act.

…

SCHEDULE 1

PARTICULAR PURPOSES FOR WHICH PROVISION MAY BE MADE UNDER SECTION

2

Section 2

PART I
LIST OF PURPOSES

…

Enforcement and offences

14.—

(1) Conferring on regulators functions with respect to the monitoring and inspection of the carrying on of activities to which permits relate, including—

(a) power to take samples or to make copies of information;

(b) power to arrange for preventive or remedial action to be taken at the expense of holders of permits.

(2) Authorising regulators to appoint suitable persons to exercise any such functions and conferring powers (such as those specified in section 108(4) of the Environment Act 1995) on persons so appointed.

…

17.

The creation of offences and dealing with matters relating to such offences, including—

(a) the provision of defences; and

(b) evidentiary matters.

Regulatory Enforcement and Sanctions Act 2008

37 "Regulator"

(1) In this Part, *"regulator"* means–

(a) a person specified in Schedule 5 (in this Part called a *"designated regulator"*), or
(b) a person, other than a designated regulator, who has an enforcement function in relation to an offence to which subsection (2) applies.

(2) This subsection applies to an offence contained, immediately before the day on which this Act is passed, in an enactment specified in Schedule 6.

38 "Relevant offence"

(1) In this Part, *"relevant offence"* , in relation to a designated regulator, means an offence–

(a) in relation to which the designated regulator has an enforcement function, and
(b) which is contained in an Act immediately before the day on which this Act is passed.

(2) In this Part *"relevant offence"* , in relation to a regulator other than a designated regulator, means an offence–

46 Stop notices

(1) The provision which may be made under this section is provision conferring on a regulator the power to serve a stop notice on a person.

(2) For the purposes of this Part a "stop notice" is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(3) Provision under this section may only confer such a power in relation to a case falling within subsection (4) or (5).

(4) A case falling within this subsection is a case where–

(a) the person is carrying on the activity,
(b) the regulator reasonably believes that the activity as carried on by that person is causing, or presents a significant risk of causing, serious harm to any of the matters referred to in subsection (6), and
(c) the regulator reasonably believes that the activity as carried on by that person involves or is likely to involve the commission of a relevant offence by that person.

(5) A case falling within this subsection is a case where the regulator reasonably believes that–

(a) the person is likely to carry on the activity,
(b) the activity as likely to be carried on by that person will cause, or will present a significant risk of causing, serious harm to any of the matters referred to in subsection (6), and

(c) the activity as likely to be carried on by that person will involve or will be likely to involve the commission of a relevant offence by that person.

(6) The matters referred to in subsections (4)(b) and (5)(b) are–

(a) human health,

(b) the environment (including the health of animals and plants), and

(c) the financial interests of consumers.

(7) The steps referred to in subsection (2) must be steps to remove or reduce the harm or risk of harm referred to in subsection (4)(b) or (5)(b).

50 Enforcement undertakings

(1) The provision which may be made under this section is provision–

(a) to enable a regulator to accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed a relevant offence, and

(b) for the acceptance of the undertaking to have the consequences in subsection (4).

(2) For the purposes of this Part, an "enforcement undertaking" is an undertaking to take such action as may be specified in the undertaking within such period as may be so specified.

(3) The action specified in an enforcement undertaking must be–

(a) action to secure that the offence does not continue or recur,

(b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,

(c) action (including the payment of a sum of money) to benefit any person affected by the offence, or

(d) action of a prescribed description.

(4) The consequences in this subsection are that, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it–

(a) that person may not at any time be convicted of the relevant offence in respect of the act or omission to which the undertaking relates,

(b) the regulator may not impose on that person any fixed monetary penalty which it would otherwise have power to impose by virtue of section 39 in respect of that act or omission, and

(c) the regulator may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of section 42 in respect of that act or omission.

(5) Provision under this section may in particular include provision–

(a) as to the procedure for entering into an undertaking;
(b) as to the terms of an undertaking;
(c) as to publication of an undertaking by a regulator;
(d) as to variation of an undertaking;
(e) as to circumstances in which a person may be regarded as having complied with an undertaking;
(f) as to monitoring by a regulator of compliance with an undertaking;
(g) as to certification by a regulator that an undertaking has been complied with;
(h) for appeals against refusal to give such certification;
(i) in a case where a person has given inaccurate, misleading or incomplete information in relation to the undertaking, for that person to be regarded as not having complied with it;
(j) in a case where a person has complied partly but not fully with an undertaking, for that part-compliance to be taken into account in the imposition of any criminal or other sanction on the person;
(k) for the purpose of enabling criminal proceedings to be instituted against a person in respect of the relevant offence in the event of breach of an undertaking or any part of it, to extend any period within which those proceedings may be instituted.

62 Offences under subordinate legislation

(1) This section applies where, by virtue of a specified enactment–

(a) a Minister of the Crown has, or the Welsh Ministers have, power by statutory instrument to make provision creating a criminal offence, and
(b) the power has been or is being exercised so as to create the offence.

(2) The power includes power to make, in relation to a relevant enforcement authority, any provision which could be made by an order under this Part if, for the purposes of this Part–

(a) the relevant enforcement authority were a regulator, and
(b) the offence were a relevant offence in relation to that regulator.

71 Interpretation of Part 3

(1) In this Part–

…

"enforcement function" , in relation to an offence, means a function (whether or not statutory) of taking any action with a view to or in connection with the imposition of any sanction, criminal or otherwise, in a case where the offence is committed;

…

(2) For the purposes of this Part, any reference to a person who has an enforcement function in relation to an offence includes a reference to a person who is in any circumstances capable of exercising an enforcement function in relation to the offence.

Water Act 2014 c. 21

PART 3
ENVIRONMENTAL REGULATION

61 Regulation of the water environment
(1) The Minister may by regulations make provision for any of the purposes listed in Part 1 of Schedule 8; and Part 2 of that Schedule has effect for supplementing Part 1.

(2) Except as provided in Schedule 8, any provision so made is to be provision for or in connection with—
(a) regulating the use of water resources,
(b) securing the drainage of land or the management of flood risk, or
(c) safeguarding the movement of fish through regulated waters.
…
(9) In this section and Schedule 8—
“enactment” includes—
(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
(b) an enactment contained in, or an instrument made under, an Act of the Scottish Parliament;
(c) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales;
…

SCHEDULE 8
REGULATION OF THE WATER ENVIRONMENT

Section 61
PART 1
PURPOSES FOR WHICH PROVISION MAY BE MADE
Interpretation
…
Preliminary
3
(1) Establishing standards, objectives or requirements in relation to—
(a) regulated activities, and
(b) in the case of fish regulations, structures or obstructions that affect, or could affect, the movement of fish through regulated waters.
(2) In the case of water regulations, authorising the making of plans for—
(a) the setting of overall limits,
(b) the allocation of rights, or
(c) the progressive improvement of standards or objectives,
relating to the use of water resources.

(3) In the case of water regulations, authorising the making of schemes for the trading or other transfer of rights so allocated.

…
4
(1) Determining the authorities (whether public or local or the Minister) by whom functions conferred by the regulations—
(a) in relation to permits under the regulations, or
(b) otherwise for or in connection with the regulated field,
are to be exercisable (in this Schedule referred to as "regulators").
…
26
Creating offences and dealing with matters relating to such offences, including—
(a) the provision of defences, and
(b) evidentiary matters.

Environmental Permitting (England and Wales) Regulations 2016 /1154

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred by—

(a) sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 ("the 1999 Act")1;

(b) sections 61 and 90 of, and Schedule 8 to, the Water Act 2014 ("the 2014 Act")2; and

(c) paragraph 1A of Schedule 2 to the European Communities Act 19723.

The Secretary of State also makes these Regulations in exercise of the powers conferred by section 62 of the Regulatory Enforcement and Sanctions Act 2008 ("the 2008 Act")

…

38.— Offences

(1) It is an offence for a person to—

(a) contravene regulation 12(1), or

(b) knowingly cause or knowingly permit the contravention of regulation 12(1)(a).

(2) It is an offence for a person to fail to comply with or to contravene an environmental permit condition.

(3) It is an offence for a person to fail to comply with the requirements of an enforcement notice or of a prohibition notice, suspension notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice or flood risk activity remediation notice.

(4) It is an offence for a person—

(a) to fail to comply with a notice under regulation 61(1) requiring the provision of information, without reasonable excuse;

(b) to make a statement which the person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—

(i) in purported compliance with a requirement to provide information imposed by or under a provision of these Regulations,

(ii) for the purpose of obtaining the grant of an environmental permit to any person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit, or

(iii) for the purpose of obtaining, renewing or amending the registration of an exempt facility;

(c) intentionally to make a false entry in a record required to be kept under an environmental permit condition;

(d) with intent to deceive—

(i) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition, or

(ii) to make or have in the person's possession a document so closely resembling such a document as to be likely to deceive.

(5) It is an offence for an establishment or undertaking to—

(a) fail to comply with paragraph 17(3) or (4) of Schedule 2, or

(b) intentionally make a false entry in a record required to be kept under that paragraph.

(6) If an offence committed by a person under this regulation is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly, whether or not proceedings for the offence are taken against the first-mentioned person.

…

39.— Penalties and enforcement undertakings

(1) Subject to paragraph (2), a person guilty of an offence under regulation 38(1), (2) or (3) is liable—

(a) on summary conviction to a fine or imprisonment for a term not exceeding [the general limit in a magistrates' court][1] , or to both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.

[(7) Schedule 26A (Variable monetary penalties (England)) has effect.}

…

41.— Offences by bodies corporate

(1) If an offence committed under these Regulations by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.

(3) In paragraph (1), *"officer"* , in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

…

Schedule 26A Variable monetary penalties (England)

1.— Power to impose a variable monetary penalty

(1) The Agency may by notice impose on a person a requirement to pay to the Agency a monetary penalty of such amount as the Agency may determine ("a variable monetary

penalty") in relation to a relevant offence which is committed in England on or after 1st December 2023.

(2) The Agency may only impose a variable monetary penalty where it is satisfied beyond reasonable doubt that the person has committed the offence.

(3) In this Schedule, *"a relevant offence"* means an offence specified in regulation 38.

Regulatory Reform (Scotland) Act 2014 asp (Scottish Act)

46 Amendment of powers under section 108 of Environment Act 1995

(1) The Environment Act 1995 is amended as follows.

(2) In section 108 (powers of enforcing authorities and persons authorised by them)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (b) is repealed,

(ii) after paragraph (c) insert—

“(d) of determining whether any of the following offences are being or have been committed—

(i) an offence under section 110 of this Act;

(ii) an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 (offences relating to significant environmental harm);

(iii) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to an offence mentioned in sub-paragraph (i) or (ii) above;

(iv) an attempt, conspiracy or incitement to commit an offence mentioned in sub-paragraph (i) or (ii) above; or