Neutral Citation Number: [2022] EWHC 378 (Admin)

Case No: CO/1977/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre

Date: 21/02/2022

Before :

MR JUSTICE CHOUDHURY

- -

Between :

HIGGINSHAW ABATTOIR LIMITED **MOHAMMED RAFI**	**Claimants**
- and -	
GREATER MANCHESTER MAGISTRATES COURT	**Defendant**
-and-	
FOOD STANDARDS AGENCY	**Interested Party**

- -
- -

Mr David Hercock (instructed by **Hillyer McKeown**) for the **Claimants**
Mr Nicholas Ostrowski (instructed by **Mrs Gurwinder Kaur Olive, Food Standards Agency**) for the **Interested Party**

Hearing date: Tuesday 8 February 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30 1st March 2022.

Mr Justice Choudhury :

Introduction

1. The Claimants seek Judicial Review of decisions of the Greater Manchester Magistrates' Court (District Judge McGarva) rejecting the Claimant's contentions as to the validity of the Prosecution's allegations against them. The Claimants are represented by Mr Hercock of Counsel, and the Interested Party, The Food Standards Agency ("FSA"), is represented by Mr Ostrowski of Counsel, who did not appear in the court below. As is usual in such applications, the Defendant does not appear.

Background

2. Higginshaw Abattoir Limited ("HAL") is, as its name suggests, a company in the business of operating a slaughterhouse. The Second Claimant, Mr Rafi, is a director of HAL.

3. *Regulation (EC) No. 853/2004* ("Regulation 853/2004" / "the Regulation") is one of a series of EU Regulations that lays down specific hygiene rules for the storage and transportation of food of animal origin ("EU Hygiene Regulations"). Like any EU Regulation, Regulation 853/2004 has direct effect in Member States. Regulation 853/2004 confers certain powers in relation to the enforcement of food hygiene and safety on the "competent authority" to be determined by the Member State. The relevant domestic legislation for present purposes is the *Food Safety and Hygiene (England) Regulations 2013* ("the 2013 Regulations"). The 2013 Regulations establish the FSA as the competent authority for the purposes of, and create offences for breaches of, the EU Hygiene Regulations.

4. Regulation 853/2004 imposes requirements on Food Business Operators ("FBOs") like HAL to chill meat to specified temperatures before storage and transport. There is a permitted derogation in limited circumstances for the transport of meat above those temperatures and without chilling. This is referred to as "warm meat" transportation.

5. The relevant provisions of Regulation 853/2004 for present purposes are contained in Annex III, Section I, Chapter VII thereof. This provides:

> "CHAPTER VII: STORAGE AND TRANSPORT
>
> Food business operators must ensure that the storage and transport of meat of domestic ungulates takes place in accordance with the following requirements.
>
> 1. (a) Unless other specific provisions provide otherwise, post-mortem inspection must be followed immediately by chilling in the slaughterhouse to ensure a temperature throughout the meat of not more than 3 °C for offal and 7 °C for other meat along a chilling curve that ensures a continuous decrease of the temperature. However, meat may be cut and boned during chilling in accordance with Chapter V, point 4.
>
> (b) During the chilling operations, there must be adequate ventilation to prevent condensation on the surface of the meat.

2. Meat must attain the temperature specified in point 1 and remain at that temperature during storage.

3. Meat must attain the temperature specified in point 1 before transport, and remain at that temperature during transport.

However, following points (a) and (b) shall apply.

(a) Transport of meat for the production of specific products may take place before the temperature specified in point 1 is attained if the competent authority so authorises, provided that:

(i) such transport takes place in accordance with the requirements that the competent authorities of origin and destination specify in respect of transport from one given establishment to another;

(ii) the meat leaves the slaughterhouse, or a cutting room on the same site as the slaughter premises, immediately and transport takes no more than 2 hours; and,

(iii) such transport is justified for technological reasons. … ".[1]

6. In this judgment, the requirements each of points 1(a) and 3 above is referred to as "Point 1(a)" and "Point 3".

7. It was common ground in the Magistrates' Court that prior to 1 November 2018, the FSA had authorised HAL and other FBOs to transport warm meat. At the end of September 2018, a standard letter was issued by the FSA to all operators revoking previous warm meat authorisations with effect from 1 November 2018.

8. The alleged offences, which involved meat not being chilled to the required temperature before transport, are said to have occurred on various dates between December 2018 and July 2019. On 5 November 2019, the FSA applied for the issue of a summons against HAL alleging offences contrary to the 2013 Regulations. On that same date, the FSA also applied for the issue of a summons against the Second Claimant, Mr Rafi.

9. At a hearing on 13 May 2021, the District Judge heard argument on a number of issues relating to the legal validity of the proceedings and whether the Magistrates' Court had jurisdiction to deal with the three informations containing the charges. Two of the informations set out 15 allegations, numbered 1 to 15 against each Claimant. These were for offences relating to the failure to attain the required temperatures for meat and offal and for failure to comply with Remedial Action Notices ("RANs") issued by the FSA. A further information in respect of HAL alleged an act of obstruction.

10. On 14 May 2021, the District Judge handed down his judgment. The District Judge dismissed the alleged offence against HAL of intentional obstruction and also dismissed alleged offences numbered 12 – 15 in the information relating to Mr Rafi.

[1] This was amended in November 2017 by Regulation (EU) 2017/1981. It is common ground that the amendments did not alter the substance of the provision but instead sought to clarify certain aspects of it: see Recital 8.

However, the Judge rejected the Claimant's arguments as to the validity of the remaining items and as to jurisdiction. Accordingly, it was decided that the proceedings could continue in relation to allegations numbered 1 – 15 against HAL and allegations 1 – 11 against Mr Rafi.

11. In particular, the District Judge rejected arguments that:

    i) there had been a failure to implement national legislation in respect of certain provisions of Regulation 853/2004 which were said to require such legislation before they could be effective;

    ii) the informations were bad for duplicity (and therefore a nullity) in that: each allegation alleged more than one offence, the charges mention both HAL and Mr Rafi even though the constituent elements of the respective offence were different for each; charges 12 – 15 referred to two different offences; and charges 12 -15 did not disclose any offence known to law;

12. It is these decisions of the District Judge that are the subject of this claim for judicial review.

The Grounds of Claim

13. The Claimants contend that the Judge erred in ruling against the Claimants' arguments. The grounds of claim may be summarised as follows:

    i) Ground 1 - The Judge erred in rejecting the Claimants' contention that the absence of national legislation properly implementing Point 3 means that Point 3 (and Point 1(a)) cannot provide the foundation for the alleged statutory offences against the Claimants under the 2013 Regulations.

    ii) Ground 2 - The Judge erred in rejecting the Claimants' contention that the informations in this case are nullities. This ground of claim gives rise to four sub-issues which are referred to as Grounds 2(a) – 2(d); and

    iii) Ground 3 - The Judge erred in rejecting the argument that the RAN – which is the subject of allegations 12 to 15 – is a nullity and therefore did/does not exist in law. This ground of claim involves three sub-issues referred to here as Grounds 3(a) – 3(c).

14. HHJ Sephton QC granted permission on the papers in respect of Ground 2(a) only; the remaining grounds all being refused permission. The Claimants seeks to renew permission in respect of Grounds 1, 2(b) to (d) and 3. This is therefore a full hearing in respect of Ground 2(a) and a rolled-up hearing in respect of the remaining grounds. Notwithstanding that, it is convenient to consider each of the Grounds in turn commencing with Ground 1.

Ground 1 – Failure to implement national legislation

15. The Claimants' contention here is that the absence of national legislation properly implementing Point 3 means that Point 3 (and Point 1(a)) cannot provide the foundation for the statutory offences with which the Claimants are charged. Two main arguments are developed in support of that contention: the first is that although Point

3 confers on the FSA, as the competent authority, the power to authorise the transportation of warm meat subject to certain requirements being met, it does not regulate the power to grant, amend, suspend or revoke such authorisation. This is to be contrasted with other provisions in the EU Hygiene Regulations which do set out a detailed scheme relating to such matters. The second point made by the Claimants is that national legislation is required to create an adequate right of appeal against the decisions of the competent authority. The internal appeal available under the FSA's Manual of Official Controls ("MOC") does not suffice for these purposes as it does not provide an effective right of appeal to an independent and impartial tribunal and amounts to a mere administrative practice which can be changed at any time and does not comply with the requirement of legal certainty.

16. It is well established that although an EU Regulation is directly applicable and becomes part of the domestic law of this country, that does not necessarily mean that a particular provision of the Regulation confers specifically enforceable rights or obligations. The principle was stated by the CJEU in *Danske Svineproducenter v Justitsministeriet* C-316/10:

"39. Therefore, by virtue of the very nature of regulations and of their function in the system of sources of European Union law, the provisions of regulations generally have immediate effect in the national legal systems without its being necessary for the national authorities to adopt measures of application (see Case C-278/02 Handlbauer [2004] ECR I-6171, paragraph 25 and the case-law cited).

40. However, some of their provisions may necessitate, for their implementation, the adoption of measures of application by the Member States (Handlbauer, paragraph 26 and the case-law cited).

……

43. In order to determine whether a national measure for the application of Regulation No 1/2005 is in accordance with European Union law, it is therefore necessary to refer to the relevant provisions of that regulation in order to establish whether those provisions, interpreted in the light of the objectives of that regulation, prohibit, require or allow Member States to adopt certain measures of application and, particularly in the latter case, whether the measure concerned comes within the scope of the discretion that each Member State is recognised as having." (Emphasis added)

17. In domestic caselaw, the principle was clearly set out by Singh J (as he then was) in *R (Jaspers (Treburley) Ltd) v Food Standards Agency* [2013] EWHC 1788 (Admin):

"31. There is no doubt that the Regulation is directly applicable within the meaning of EU law and, as such, it is part of the domestic law of this country and does not need further enactment. However, that does not necessarily lead to the conclusion that a particular provision in the Regulation either confers rights on individuals or imposes obligations on them which can be enforced in the national legal order. The answer to that question will still depend on whether the particular provision concerned fulfils the well-established criteria for direct effect.

32 An early case in the Court of Justice of the European Communities concerning the effect of European Community regulations was Criminal proceedings against Galli

(Case 31/74) [1975] ECR 47. That case concerned Regulation (EEC) No 120/67on the common organisation of the market in cereals. In giving his opinion, Sir Jean-Pierre Warner, the Advocate General, said, at p 70:

> certain provisions of Regulation (EEC) No 120/67 should be regarded as conferring rights on private persons, whilst others should be regarded as binding member states only, without conferring such rights. It may be asked: How can this be, when article 189[now article 288] of the Treaty provides: 'A Regulation shall have general application. It shall be binding in its entirety and directly applicable in all member states?' The answer, I think, lies in this . . . the provisions of article 189 were the means chosen by the authors of the Treaty to ensure that every Regulation should, automatically, be incorporated into the law of each member state. In the absence of such a provision, each Community Regulation would have had to be so incorporated by the method appropriate by the constitutional law of the state - a bewildering prospect. But it does not follow that every provision of every Regulation confers rights on citizens of member states that they can rely on in their national courts. We are familiar with national statutes, which unquestionably form part of national law, some provisions of which impose obligations on the state or on public authorities without conferring personal rights on citizens. This must be so too in the case of Community Regulations. Their provisions can have direct effect, in the sense of conferring personal rights, capable of being upheld by national courts, only in so far as they satisfy the familiar tests laid down by the court, ie the tests of being clear and unconditional, and of requiring no further legislative action for their implementation." (Emphasis added)

18. The first question therefore is whether the provision in question, namely Point 3, is clear and unconditional and requires no further legislative action for its implementation. That is a question of interpretation for the Court. I turn therefore to the terms of the relevant provision.

19. No issue is taken with Points 1 or 2. That is unsurprising as these contain very specific and detailed requirements as to the temperatures which meat and offal must attain and the times by which they must be attained for storage. The Claimants also do not take issue with the first part of Point 3 which requires that such temperatures are to be attained before transport and remain at that temperature during transport. The difficulty, submits Mr Hercock, arises with the riders at (a) and (b), and with rider (a) in particular:

"(a) Transport of meat for the production of specific products may take place before the temperature specified in point 1 is attained if the competent authority so authorises, provided that:

(i) such transport takes place in accordance with the requirements that the competent authorities of origin and destination specify in respect of transport from one given establishment to another;

(ii) the meat leaves the slaughterhouse, or a cutting room on the same site as the slaughter premises, immediately and transport takes no more than 2 hours; and,

(iii) such transport is justified for technological reasons."

20. Mr Hercock submits that authorisation is central to the operation of this exception in respect of warm meat, but the parameters governing when such authorisation may be granted, amended, suspended or revoked remain uncertain and require further legislation for clarity. Forcefully though that argument was made, I cannot agree with Mr Hercock that there is any uncertainty in the application of Point 3 such as to require further national legislation:

    i) Had the rider simply conferred on the competent authority an untrammelled discretion to authorise warm meat transportation then there might have been something in Mr Hercock's argument. Such a wide discretion could introduce uncertainty in the application of the Regulation and might operate to undermine the strict temperature requirements intended to be imposed by Points 1 to 3.

    ii) However, the discretion is not unqualified; far from it, as can be seen from the very specific requirements set out in (i), (ii) and (iii) of rider (a) that must be met before authorisation can be conferred. Thus, the discretion conferred on the competent authority (and only on that authority) is highly circumscribed. The FBO would know precisely the requirements it has to meet before there could be any prospect of obtaining warm meat authorisation.

    iii) That the scope of the derogation from the obligation to chill meat to 7°C before transport is intended to be narrow is confirmed by Recital 8 of Regulation (EU) 2017/1981 amending Annex III to Regulation 853/2004:

    "Regulation (EC) No 853/2004 also provides for a derogation from the obligation to chill the meat to 7 °C before transport with regard to specific products under specific conditions. To avoid any misuse of this derogation, it is appropriate to clarify that this is only allowed if justified by technological reasons, e.g. when chilling to 7 °C may not contribute to the hygienic and technically most appropriate processing of the product."

    iv) There is no suggestion in this case that the FSA has sought to impose any arbitrary or unreasonable conditions for authorisation that go well beyond the scope of (i), (ii) or (iii) of rider (a). Indeed, the MOC itself states that "The Regulations … state the conditions that must be met for such authorisation to be provided", and it has not been suggested that there is anything in the MOC that contradicts or goes beyond the Regulation.

    v) It would not be feasible for Point 3 to stipulate each origin or destination that might arise as between the numerous FBOs and customers to whom the Regulation applies, and nor would it be feasible to stipulate each and every technological reason for which such transport might be justified. Such matters are sensibly (and necessarily) left to the competent authority to determine subject to the requirements set out. However, that does not mean that the Regulation lacks clarity or gives rise to any operational uncertainty.

21. The conclusion that Point 3 does not fall within the narrow group of provisions that require the adoption of certain measures of application: *Danske* at [43], means that this challenge under Ground 1 is without substance.

22. The fact that Point 3 does not stipulate the precise terms on which an authorisation may be amended, suspended or withdrawn does not affect the position. Where, as in this case, the fundamental bases on which authorisation may be granted are laid out in the Regulation itself, the FBO seeking authorisation will know what is required, and the circumstances in which such authorisation would be liable to suspension or revocation could readily be predicted. The MOC, at 3.2, provides:

> "Once an authorisation to transport over temperature meat has been granted it may be amended, suspended or revoked if the FSA is satisfied the conditions under which it was granted are no longer being met."

23. Any amendment, suspension or revocation is therefore directly dependent on whether the terms of the original authorisation are continuing to be met; there is no suggestion that the FSA is seeking to apply further criteria for such amendments, suspensions or revocations that unreasonably exceed or contradict the terms of Point 3.

24. I was referred to the terms of Article 31 of Regulation 882/2004 (on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules), which *does* stipulate the circumstances in which the competent authority will approve the registration of FBOs' establishments as a feed and food business. However, that relates to a more general requirement that an FBO establishment be approved and registered in accordance with the requirements of feed or food law before engaging in the feed and food trade; it is not concerned with a limited derogation from a highly specific and detailed requirement (as in Points 1 to 3 of Regulation 853/2004) that meat and offal attain certain temperatures before storage and transport.

25. I was also referred to the case of *European Commission v Italy* (C-145/82) [1984] 1 CMLR 148 in which it was held that the issuing of governmental circulars, "which may be altered at the whim of the authorities and lack the appropriate publicity", did not constitute valid implementation of EC Directives. That case does not assist the Claimants, principally because it is concerned with the implementation of Directives, whereas Regulations, which have direct effect, only require national legislation if the interpretation of a particular provision in the light of the objectives of that regulation leads to the conclusion that the provision fails to meet the criteria of being clear, unconditional and requiring no further legislative action for its implementation: *Galli* (Case 31/74) [1975] ECR 47 at p.70. As I have concluded above, the interpretative exercise in this case does not lead to that conclusion.

26. Mr Hercock's second main argument under Ground 1 is that national legislation is required to create rights of appeal against the decisions of the competent authority in relation to the grant, amendment, suspension and revocation of authorisations. Reliance is placed on the CJEU's decision in *Association of Independent Meat Suppliers & Others v Food Standards Agency* (Case C-579/19) ("*AIMS*") and para. 80 thereof in which it was stated:

"It follows that the Court of Justice and the European Court of Human Rights adopt the same rule whereby, as the Advocate General observes in point 68 of his Opinion, the right to effective judicial protection guaranteed by Article 47 of the Charter provides that, in order for a court or tribunal to determine a dispute concerning rights and obligations under EU law, it must have power to consider all the questions of fact and law that are relevant to the case before it (judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 49 and the case-law cited)."

27. Mr Hercock submits that this confirms the general rule that EU law requires there to be a statutory right of appeal on the merits to an independent and impartial tribunal established by law. In *AIMS*, where the issue was whether judicial review of a decision of the Official Veterinarian ("OV") not to affix a health mark to a carcass, the CJEU considered that in the particular circumstances of the case, including the high level of complexity of the decision in question and the expertise required to make it, judicial review did provide an adequate remedy notwithstanding the fact that judicial review does not involve a full appeal on the merits: see *AIMS* at [84] to [93]. By contrast, submits Mr Hercock, the relatively non-technical decision in relation to a warm meat authorisation should be subject to "the general rule" and the right to a full appeal on the merits conferred by legislation.

28. In my judgment, *AIMS* is not authority for the proposition that the taking of a non-technical or specialist decision must always carry with it a statutory right of appeal on the merits. As the CJEU made clear in *AIMS* at [78] to [79], whether or not the availability of judicial review is sufficient to satisfy the rights under Article 47 of the Charter of Fundamental Rights of the EU to an effective remedy, will depend on the specific circumstances of each case:

"78 It should be borne in mind, in that context, that compliance with the right to effective judicial protection, guaranteed by Article 47 of the Charter, must be examined, in accordance with settled case-law, in relation to the specific circumstances of each case, including the nature of the act at issue, the context in which it was adopted and the legal rules governing the matter in question (see, to that effect, judgment of 26 July 2017, Sacko, C-348/16, EU:C:2017:591, paragraph 41 and the case-law cited).

79 These are criteria which are, in essence, comparable to those applied by the European Court of Human Rights. The latter court has consistently held that, in order to assess whether, in a given case, the national courts have carried out a review of a sufficient extent, it must have regard to the powers of the judicial body in question and to such factors as, first, the subject matter of the decision appealed against, and in particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and, if so, to what extent; second, the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the administrative body; and third, the content of the dispute, including the desired and actual grounds of appeal (ECtHR, 6 November 2018, *Ramos Nunes de Carvalho e Sá v Portugal*, CE:ECHR:2018:1106JUD005539113, § 179 and the case-law cited)."

29. In the present case, as already stated above, Point 3 involves a limited derogation from the strict requirements to attain specified temperatures for meat and offal before

storage and transport, whereby authorisation to transport warm meat may be conferred by the competent authority subject to three prescribed requirements. The nature of the competent authority's decision, which will be based primarily on prescribed factors, is not such that a full merits appeal with an elaborate appeal code is necessary. It suffices, in my judgment, that there is (in accordance with Recital 43 of Regulation EC 882/2004) a right of appeal, albeit one that is provided for in the MOC. Furthermore, there is the availability of judicial review in respect of the FSA's decision under which the Court may consider whether the FSA has acted for an improper purpose, has failed to apply the correct legal tests or has reached a decision which is irrational or has no sufficient evidential basis. It cannot be said, in my judgment, that in the circumstances of this case, such remedy fails to satisfy the requirements of Article 47 of the Charter.

30. The Claimants' skeleton argument also suggested that the need for national legislative measures arises in the context of property rights under Article 17 of the Charter and Article 1 Protocol 1 of the ECHR. The basis for that argument is that the revocation of a warm meat authorisation has the effect of interfering with a person's business and therefore with the rights under the aforementioned articles. Although not abandoned, this was not an argument that Mr Hercock pursued orally. In my judgment, he was right not to do so. As Mr Ostrowski pointed out, this case is not about the revocation of the warm meat authorisation with effect from 1 November 2018; there is, at most, an unpleaded challenge to a putative refusal to grant a warm meat authorisation. No property or possession rights are therefore engaged, and I need say no more about this aspect of the claim.

31. It follows that, for these reasons, I consider Ground 1 to be unarguable and permission is refused.

Ground 2 – Alleged Nullity of the Informations

Ground 2(a) – Two different offences alleged.

32. Allegations 1 to 11 in both informations are in similar terms differing only in respect of the dates of the offence charged and the particulars of the meat/offal found to be at the infringing temperature. I set out here the first such allegation:

> "Information has been laid this day, 05 November 2019, by Chris McGarvey, Head of Legal Services at the Food Standards Agency alleging that you have committed the below offences:
>
> 1. Higginshaw Abattoir Limited, a food business operator and Mohammed Rafi a director of the said company by his consent, connivance or neglect did on the 17th December 2018 at The Abattoir, Higginshaw Lane, Royton, Oldham, Greater Manchester, OL2 6HQ, a slaughterhouse in which domestic ungulates are slaughtered, fail to comply with a specified community provision at Article 3(1) and Annex 111, Section 1, Chapter VII, para 1, points 1(a) and 3 of Regulation (EC) No 853/2004 namely by failing to ensure that post mortem inspection of meat was followed immediately by chilling to ensure a temperature of not more than 3°C for offal and 7°C for other meat and to attain those temperatures before transport when sheep offal was found ready for transport at temperatures which measured in excess of the prescribed levels.

CONTRARY TO Regulations 19(1) and 20(1) of the Food Safety and Hygiene Regulations (England) 2013"

33. The District Judge commented that "the current wording [of the informations] does leave something to be desired". HHJ Sephton QC went further and described the preparation of the informations as "slapdash and shoddy". It is hard to disagree with those comments. However, the issue here is not merely whether something could have been better drafted but whether the information as it stands falls foul of the principle relevant to this first challenge under Ground 2 that an information should contain only one offence. That principle is encapsulated in Part 7 of the Crim PR as follows:

"**Application for summons, etc**.
7.2.-(1) …….
……..
(3) An application for the issue of a summons or warrant must—
(a) set out the allegation or allegations made by the applicant in terms that comply with rule 7.3(1) (Allegation of offence in application or charge);
……
Allegation of offence
7.3.-(1) An allegation of an offence in an application for the issue of a summons or warrant or in a charge must contain—
(a) a statement of the offence that—
(i) describes the offence in ordinary language, and
(ii) identifies any legislation that creates it; and
(b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.

(2) More than one incident of the commission of the offence may be included in the allegation if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission." (Emphasis added)

34. Thus, whilst an allegation may refer to more than one incident of the commission of the offence where those incidents taken together amount to a course of conduct, no more than one offence may be included in an allegation: see *Ward v Dagenham & Barking LBC* [2000] E.H.L.R 263.

35. Mr Hercock's submission is that the allegation as set out above clearly refers to two separate offences: the first being the offence of failing to ensure that post-mortem inspection of meat was followed immediately by chilling to ensure a temperature of not more than 3°C for offal and 7°C for other meat ("the chilling offence"); and the second being the failure to attain those temperatures before transport ("the transportation offence"). I should mention here that the District Judge considered the two offences to be two instances of the same offence. However, that is not, in my view, consistent with the terms of Point 1(a) and Point 3, which would appear to establish distinct and separately enforceable obligations, and the District Judge's interpretation is not one that was addressed by either Mr Hercock or Mr Ostrowski.

36. Reliance is placed on the decision of the Divisional Court in *Ward* (supra) in which an information was laid initially alleging that the appellant had given food exposed for sale wrongly labelled contrary to the *Food Safety Act 1990*. The issue for the Court was whether the information was a nullity by reason of having referred to two separate offences in the same information:

> "In the present case it is necessary to go back to the provisions of section 15 of the Food Safety Act which were in fact in play. The prosecution has never contended that an offence was committed by this appellant, other than an offence contrary to the provisions of section 15(1) . It is clear from reading that subsection that the section can be contravened in more than one way. In particular, if a person gives a label with food sold by him, which falsely describes the food or is likely to mislead, he is guilty of an offence. Separately and alternatively, if he displays with food offered or exposed by him for sale a label which falsely describes the food or is likely to mislead, again he will be guilty of an offence – but clearly a different offence from the offence which he would commit if he were to give a label with food which he sold.
>
> The difficulty which I face in this case is that when one comes to read the summons which was served upon this appellant, it is impossible to discern which of those two quite separate offences was being alleged in the summons itself. It is not entirely insignificant because if the offence were that he gave a misleading label with food which he sold, anyone advising Mr Ward would say to him that the matter was worth contesting, because he never handed over a label to anyone; whereas if it was an allegation that he applied a misleading label to food which he exposed for sale, he might have been, to say the least, in some difficulty in finding a defence at all.
>
> In those circumstances it seems to me that if one poses the question which was posed by McCullough J and adopted by Dyson J, "did this summons enable the defendant to identify the misdoing alleged against him?" the answer to it must be in the negative. And if the answer to it is in the negative, it must surely follow that there was no summons with any life in it at the end of the 12-month period which could be amended by the justices when the matter came before them." (per Kennedy LJ)

37. Mr Hercock submits that the information in the present case is similarly one without "any life in it" and therefore not susceptible to amendment.

38. The question is, as identified by Kennedy LJ in *Ward*, whether the information enabled the Claimant to identify the misdoing alleged against him. Putting aside for the moment the fact that the information in question is addressed to both Claimants (an issue to which I shall return below), it is tolerably clear in my judgment that the information is directed to Point 3 and the transportation offence. Whilst reference is made to the chilling offence, it is clear from the particulars of the offence that it is the transportation offence that is being charged. The particulars appear at the end of the information and provide:

> "… when sheep offal was found ready for transport at temperatures which measured in excess of the prescribed levels"

39. Those particulars, which refer to the offal being found "ready for transport" at the wrong temperature, clearly relate to the transportation offence; there is no indication

that sheep offal had, for example, been found to be not subject to any chilling immediately following the post-mortem inspection, the latter comprising potential particulars of the chilling offence.

40. I accept that the drafting in the earlier part of the information, if read alone, could lead one to conclude that both offences were being charged. However, the information must be read as a whole taking account of the particulars alleged. In my judgment, taking that approach would leave the reader in little doubt that they were being charged with the transportation offence under Point 3. The circumstances of the present case are different from those which pertained in *Ward*: in that case, there was nothing in the information, even read as a whole, that would enable one to discern which of the two potential offences was being charged.

41. Accordingly, allegations 1 to 11 of the informations are not, by reason of any duplicity, rendered a nullity. Ground 2(a) is, therefore, dismissed.

42. There was much argument before me as to whether the information could be amended or whether any doubt as to its effect could be resolved by having regard to the evidence in support. However, it seems to me to be unnecessary to go into such matters in any detail given that the principal basis on which this ground was put forward has not succeeded. Suffice it to say that, as the information was not, in my judgment, a nullity, it could be amended. In any case, this does not appear to me to be a case where it can be said that no offence was alleged at all so as to render the summons *void ab initio* and therefore not capable of amendment: see *Garman v Place* [1969] 1 WLR 19. The reason that an amendment was not permissible in *Ward* was not that the summons was *void ab initio* but because it was too late for any such amendment to be effective, the 12-month period within which the summary offence had to be charged having expired. Thus, where, as in this case, the defect is one involving a multiplicity of offences, then, ordinarily, that would be capable of amendment. Whether or not such amendment is permitted would depend on whether any injustice would thereby be done to the defendant: see *R v Newcastle Justices ex p John Bryce* [1975] 1 WLR 517 at 520E.

43. In coming to the conclusion that the information is not a nullity, I would wish to emphasise that this is not to excuse the poor drafting involved. It should not be forgotten that these informations charge criminal offences, which, if resulting in a conviction, can have severe consequences for those involved. Those who are subject to such informations are entitled to expect, in the interests of fairness and justice, that they will be produced with care and a degree of rigour, whatever pressures the agency might be under in terms of resources or personnel. Even a modicum of rigour in approach would have avoided the difficulties that have arisen, and which have resulted in an arguable case that the information was defective.

Ground 2(b) – Two different offences in allegations 12 to 15.

44. Mr Hercock contends that a similar difficulty arises in respect of allegations 12 to 15 in the information against HAL (allegations 12 to 15 in the information against Mr Rafi having been dismissed by the District Judge).

45. Allegation 12 provides:

"12 On the 8th May 2019 at The Abattoir, Higginshaw Lane, Royton, Oldham, Greater Manchester, OL2 6HQ, did fail to comply with a Remedial Action Notice pursuant to Regulation 9 of the Food Safety and Hygiene Regulations (England) 2013 served on the food business operator dated the 17th April 2019 requiring compliance with Article 3(1) and Annex III, Section 1, Chapter VII, para 1, point 3 of Regulation (EC) No 853/2004 namely by dispatching meat which had not reached the specified temperature in point 1, being no more than 3°C for offal or 7°C for other meat, prior to transport, namely 24 sheep carcases loaded in a vehicle with registration number S22 EEP with measured temperatures between 10.9 °C and 23°C and three bags of offal which measured 27.3°C.
CONTRARY TO Regulation 9(5) and 19(1) of the Food Safety and Hygiene Regulations (England) 2013"

Allegations 13 to 15 are in similar terms save for the dates the alleged offences.

46. The objection here is that, although the allegation purports to relate to the failure to comply with the RAN, the reference at the end to "Regulation 9(5) and 19(1)" of the 2013 Regulations suggests that HAL was also being charged with a Point 3 offence.

47. Regulation 9 of the 2013 Regulations deals with RANs. It provides:

"Remedial action notices

9.—(1) Where it appears to an authorised officer of an enforcement authority that in respect of an establishment that Article 4(2) of Regulation 853/2004 requires to be approved —

(a) any of the requirements of the Hygiene Regulations is being breached; or

(b) inspection under the Hygiene Regulations is being hampered,

the officer may, by a notice in writing (in these Regulations referred to as a "remedial action notice")served on the relevant food business operator or duly authorised representative —

(c) prohibit the use of any equipment or any part of the establishment specified in the notice;

(d) impose conditions upon or prohibit the carrying out of any process; or

(e) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.

(2) A remedial action notice must be served as soon as practicable and must state why it is being served.

(3) If it is served under paragraph (1)(a), it must specify the breach and the action needed to remedy it.

(4) An authorised officer of the enforcement authority whose authorised officer served the original remedial action notice must, as soon as satisfied that such action has been

taken, withdraw the notice by a further notice in writing served on the food business operator or duly authorised representative.

(5) Any person who fails to comply with a remedial action notice commits an offence."

48. Thus, Regulation 9(5), which creates the offence of a failure to comply with a RAN, is correctly referenced in the information.

49. Regulation 19 of the 2013 Regulations creates offences in respect of a contravention of or failure to comply with specified EU provisions. So far as is relevant, Regulation 19 provides:

"**Offences and penalties**

19.—(1) Subject to paragraphs (4) to (8), any person who contravenes or fails to comply with any of the specified EU provisions commits an offence.

(2) Subject to paragraph (3), a person guilty of an offence under these Regulations is liable —

(a) on summary conviction to a fine not exceeding the statutory maximum; or

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

…"

50. The "specified EU provisions" include Article 3(1) of Regulation 853/2004, which imposes the requirement on FBOs to meet the relevant requirements of, amongst other matters, Annex III to Regulation 853/2004: see Regulation 1 of and Schedule 2 to the 2013 Regulations. Mr Hercock's submission is that the reference to Reg 19(1) of the 2013 Regulations means that the information is purporting to charge two offences under one allegation, thereby rendering it bad for duplicity.

51. It seems to me, however, that on a proper reading of this (admittedly poorly drafted) information, it would be clear to the informed and reasonable reader that the offence charged is solely that of failure to comply with the RAN. The information states at the outset that on the date in question HAL "…did fail to comply with the [RAN]…" pursuant to Regulation 9 of the 2013 Regulations. Although it then continues by referring to Annex III of Regulation 853/2004, it does so only to illuminate the content of the RAN; there is no separate allegation of any failure to comply with Point 3, for example. Finally, after the word "namely", the information particularises the failure of compliance giving rise to the charge. Thus, the body of the information does not, on the face of it, allege two offences.

52. What then does one make of the reference to Regulation 19(1) of the 2013 Regulations in the concluding statement of the allegation? In my judgment, the District Judge and HHJ Sephton QC were correct to consider this to be nothing more than an error. The District Judge thought that it might have been a typographical error and that it was intended to refer to Regulation 19(2) of the 2013 Regulations, that being the provision setting out the sentences for breach. However, that would seem

unlikely as there would be no reason to specify any breach of the sentencing provisions, and a similar approach was not taken in respect of the other allegations in the information. But in this case, the nature of the error is less important than the fact that there was one. The more reasonable inference to draw is that the words, "and Regulation 19(1)", were included in error, perhaps as a result of a slapdash cutting and pasting exercise or otherwise. The fact that the body of the information does not allege any failure to comply with Point 3 (or Points 1(a) to 2) supports that inference.

53. Once it is determined that this is no more than a simple error, the question that then arises is whether it can be amended without any injustice to the defendant (in this case, HAL). In my judgment, it clearly can be so amended: the nature of the allegation, namely the failure to comply with the RAN, is evident from the body of the information, and there is no realistic prospect of the defendant not understanding the nature of the charge against it.

Ground 2(c) – No offence in law

54. The contention here is that in relation to both Claimants, the informations do not actually disclose any alleged offences in law. The Claimants submit that a failure to comply with Point 3 requires proof of actual transport, and that an allegation that meat that had not attained the correct temperature was "ready for transport" does not disclose any offence.

55. This submission strikes me as somewhat misconceived. The terms of Point 3 are clear that the requirement is for meat and offal to attain the prescribed temperatures "before transport" and to remain at those temperatures "during transport". The prescribed temperatures can only be maintained during transport if they have already been attained prior to transport, it being impermissible to chill meat to the required temperature once transport commences. Thus, the critical element of the requirement is the attainment of the prescribed temperature before transport, and a breach would be apparent if such temperature was not so attained. That is why it was adequate for the informations to allege that meat that was "ready for transport" had not attained the required temperature.

56. Mr Hercock sought to suggest that to read Point 3 in this way, and to place the emphasis on the temperatures being attained "before transport", would lead to uncertainty, since the time frame denoted by the word "before" could range from 'immediately before' to 'some considerable period of time before' transportation commenced. I do not agree that there is any uncertainty: the requirement is simply that the meat attains the required temperature before transport commences. If there is a delay in transport commencing after the meat has attained the correct temperature, the FBO would still be compliant if the meat remains at that temperature until immediately prior to transport commencing.

57. Mr Hercock's suggestion that the offence is only committed if there is actual transportation at the wrong temperature would, if correct, be likely to render the enforcement of the provision impracticable: OVs would either have to stop vehicles *en route* or would have to board the vehicle with the meat in order to take temperature readings. It was not suggested that such measures are feasible. For a non-compliance to occur, it is enough that meat that is "ready for transport" is found not to have attained the correct temperature.

58. Once the effect of Point 3 is properly understood, there is no difficulty at all in understanding the offence charged, which is most certainly an offence in law.

Ground 2(d) – Legally incomprehensible

59. The contention here is that each of the allegations 1-11 against HAL names both HAL and Mr Rafi in the same allegation and alleges an offence which can have no application to HAL as a corporate body.

60. The impugned wording is set out above but is repeated here for convenience:

> "To: Higginshaw Abattoir Limited (04005954)
> Of: The Abattoir, Higginshaw Lane, Royton, Oldham, Lancashire, OL2 6HQ
> …
> Information has been laid this day, 05 November 2019, by Chris McGarvey, Head of Legal Services at the Food Standards Agency alleging that you have committed the below offences:

1. Higginshaw Abattoir Limited, a food business operator and Mohammed Rafi a director of the said company by his consent, connivance or neglect did on the 17th December 2018 at The Abattoir, Higginshaw Lane, Royton, Oldham, Greater Manchester, OL2 6HQ, a slaughterhouse in which domestic ungulates are slaughtered, fail to comply with a specified community provision at Article 3(1) and Annex 111, Section 1, Chapter VII, para 1, points 1(a) and 3 of Regulation (EC) No 853/2004 namely by failing to ensure that post mortem inspection of meat was followed immediately by chilling to ensure a temperature of not more than 3°C for offal and 7°C for other meat and to attain those temperatures before transport when sheep offal was found ready for transport at temperatures which measured in excess of the prescribed levels.
CONTRARY TO Regulations 19(1) and 20(1) of the Food Safety and Hygiene Regulations (England) 2013

61. The Claimants submit that although this information is addressed to HAL, the reference to Regulation 20(1) of the 2013 Regulations has the effect of alleging a legally incomprehensible allegation against HAL.

62. Regulation 20(1) of the 2013 Regulations imposes liability on a person in certain circumstances where an offence has been committed by a body corporate of which he is a director. It is a provision that would be relevant to the information addressed to Mr Rafi, but not to HAL. Mr Hercock submits that this reference to Regulation 20(1) of the 2013 Regulations in the information addressed to HAL has the effect of alleging an offence that is incapable of being committed by a corporate body such as HAL. He relies on the decision of the Divisional Court in *R v Liverpool City Magistrates ex parte Stocks* [2000] 3 WLUK 571, in which an information purporting to allege that the defendant had aided and abetted himself was held to be "in legal terms incomprehensible" and therefore "null and void". That same reasoning, submits Mr Hercock, can be applied to the present case.

63. This ground is similar to that raised under Ground 2(b) above, and suffers from the same difficulty, which is that, notwithstanding the obvious deficiencies in drafting, it

is tolerably clear from the information as a whole what offence is being charged and that the reference to Regulation 20(1) is, if anything, a remediable error. I say that for the following reasons:

i) The information is clearly addressed to HAL. A separate information addressed to Mr Rafi was issued on the same day. It would therefore have been clear to both Claimants that separate charges were being laid against each of them and that the inclusion of Mr Rafi's name in the allegations against HAL was an error;

ii) The body of each allegation describes an offence that *is* in legal terms comprehensible. HAL would be liable, as the corporate body responsible for its activities, for the offence of failing to ensure that meat and offal was at the prescribed temperatures before transport. This would be an offence contrary to Regulation 19(1) of the 2013 Regulations as stated at the end of the allegation. The position here is therefore unlike that in *Stocks* where the only offence alleged was one that was legally incomprehensible.

iii) On the basis of the above, the informed and reasonable reader of the information would understand the offence being alleged as one against HAL, and that the reference to Regulation 20(1) of the 2013 Regulations is clearly an error;

iv) The error is such that it can be readily amended without causing injustice. HAL would continue to face charges that were always contained in the information, and Mr Rafi would face the charges (so far as still effective) set out in the information addressed to him.

64. I am conscious that in taking this approach, the Claimants might feel aggrieved that the Court is being overly generous in interpreting what are clearly badly drafted informations. However, unlike the position in some of the authorities to which I was referred, the informations here (poorly set out though they were) do allege valid offences against each Claimant, and were not a nullity. It would have been tolerably clear to each Claimant what those allegations were, and any errors could be remedied by amendment. This approach is consistent with the exercise of the power to amend under s.123 of the *Magistrates Court Act 1980*, so long as no injustice is thereby done to the defence: see *ex p. John Bryce* (supra), referred to above at **[42].** There would be no injustice here for the reasons already set out.

65. For these reasons, permission is refused in respect of Grounds 2(b), (c) and (d).

Ground 3 – The RAN

66. The Claimants argue that the RAN, which forms the subject matter of offences 12 – 15, is a nullity. The RAN was served on 17 April 2019. Although, pursuant to Regulation 22(1)(c) of the 2013 Regulations, a person aggrieved by a decision to serve a RAN may appeal to the Magistrates' Court within one month of service, the Claimants did not lodge any such appeal. Instead, they first challenged the RAN after the informations were laid in November 2019. HHJ Sephton QC remarked that the challenge to the RANs was "extremely stale" given that there was an adequate alternative remedy that had not been exercised. The FSA submits, at least in its

written argument, that permission for Ground 3 should be refused for this reason alone.

67. However, the arguments raised by the Claimants are to the effect that the RAN was a nullity by reason of being defective on its face. In those circumstances, the Claimants are entitled to raise a challenge to the validity of the RAN before this Court notwithstanding the absence of any earlier appeal. In *Sarodia v Redbridge LBC* [2017] EWHC 2347 (Admin), a case concerning a defective planning enforcement notice and where there was an unexercised right of appeal to the Secretary of State, Jay J held as follows:

> "30. [Counsel] also submitted that on an appeal the Secretary of State could have amended the notice by excising the reference to the two-storey side extension. In my judgment, there are two difficulties with that proposition. The first is that the appellant could not have known in advance of an appeal what position the local planning authority would have taken. True it is that the local planning authority might have applied to remove the reference to the non-existent two-storey side extension; but, on the other hand, and consistent with its view that all the matters set out in para.3 constituted a breach of planning control, the local planning authority might have applied to rectify para.5 so that it wholly reflected para.3. In my view it is a wholly unsatisfactory state of affairs.
>
> 31. Secondly, I ask forensically, why should the appellant have appealed a notice which was defective on its face? The appellant was entitled to know in advance what the position was, not to test the water and trouble the Secretary of State. It was incumbent on the respondent to formulate its notice correctly. If in formulating the notice he made minor mistakes, correction of which could not give rise to injustice and which did not go to the heart or substance of the matter, that would be one thing; but the errors here were fundamental. There probably could not have been an appeal to the Secretary of State seeking to achieve the objective that the notice was a nullity. It follows that this enforcement notice is a nullity, and that in the result the conviction must be quashed."

68. This is not a case where permission ought to be refused *in limine* for failing to appeal against the RAN at the time. I turn therefore to the Claimants' arguments and the three sub-grounds in respect of which permission is sought. I begin with Ground 3(a).

Ground 3(a) – Failure to specify action to be taken

69. The Claimants submit that the RAN is a nullity because it fails to specify the action that must be taken to remedy the breach.

70. Regulation 9(3) of the 2013 Regulations (see above at **[47])** provides that if a RAN is served in respect of breaches of any of the EU Hygiene Regulations, "it must specify the breach and the action needed to remedy it".

71. The RAN in the present case contains;

    i) at section 2, the authorised officer's view that a requirement of the EU Hygiene Regulations is being breached

ii) In a box headed "Contravention(s)", a statement of the various breaches relied upon and the relevant provisions of the EU Hygiene Regulations.

iii) At section 3, a statement that the notice requires HAL to "observe the conditions imposed upon the process", that process being specified as "Dispatch"

iv) A statement that "The following action is necessary in order to remedy the breach of the Hygiene Regulations listed in Paragraph 2", followed by a box headed "Action to be taken by the Food Business Operator".

v) The contents of that box, which are as follows:

"To ensure that following post-mortem inspection the carcasses and offal are immediately chilled in the slaughterhouse to ensure a temperature throughout the meat of not more than 3°C for offal and 7°C for other meal along a chilling curve that ensures a continuous decrease of the temperature. The above mentioned temperatures must be attained before transport occurs and remain at that temperature during transport." (Emphasis added)

72. Mr Hercock submits that the RAN does no more than require the FBO to "ensure" that it complies with the terms of Regulation 853/2004. In so doing, it has failed to "specify the action" to be taken to remedy the breach pursuant to Regulation 9(3) of the 2013 Regulations. Support for that submission was drawn from *Canterbury County Court v Bern* (1982) 44 P & CR 178), in which a homeowner was served notice by the local authority to carry out improvement works. The notice included a schedule which stated that the owner was to "Provide" certain items, which were the items specified in the *Housing Act 1974* as comprising the standard amenities for a dwelling that attains the "full standard". The Court held that the notice failed to comply with the requirements of the Act to "specify the works which … are required to improve the dwelling to the full standard or, as the case may be, to the reduced standard". That was because the local authority in that case did no more than:

"…add the imperative of the verb "provide" in front of each of the items in this list. By no stretch of the imagination can it be said that this is a specification of works". (per Forbes J at p.185 to 186)

73. Mr Hercock submits that the same has occurred here with the FSA doing no more than adding the word "ensure" in front of the requirements of Points 1(a) and 3.

74. The difficulty with Mr Hercock's argument is that it ignores the different statutory contexts in which these notices were issued. A requirement to specify the works to be undertaken to attain a certain building standard is not met by merely identifying the items of bathroom furniture listed in the statute as being commensurate with that standard; as the court in *Canterbury v Bern* pointed out, there may be alternatives to the basic items listed, the nature of the works required might depend on the dwelling, which the local authority would have inspected, and some account would have to be taken of costs given that one of the requisite conditions precedent to the service of an improvement notice was that the local authority must be satisfied that improvements could be achieved at "reasonable cost". It was in that context that a bland imperative

"to provide" the items set out in the statute was considered to be inadequate to meet the statutory requirement to "specify the works".

75. By contrast, the high degree of specificity of the requirements in Points 1(a) and 3, and the relatively narrow subject matter, mean that the imperative to "ensure" that those requirements were met does (in the circumstances of this case) adequately specify the action to be taken to remedy the breach. There is no obligation to identify the technical means that an FBO might use to meet the requirements (although that is not to say that in an appropriate case, it could not do so); indeed, the likelihood is that FBOs utilise a range of means and/or equipment to chill meat to the desired temperatures rendering such identification impractical and/or unnecessary. The position might be different if the FSA considered a particular technical means or item of equipment to be inadequate to the task but there is no suggestion of that in this case. Mr Hercock did not identify what particular action could have been specified by the FSA in the RAN, beyond a suggestion that training needs might have been identified. However, there is no suggestion in the informations and the particulars therein to suggest that it was a lack of training that had led to the failures in question. As such, it is not clear what a reference to training would have added or why it would be necessary to specify training needs as an action.

Ground 3(b) – The RAN does not allege an extant breach.

76. The submission here is based on the fact that, pursuant to Regulation 9(1) of the 2013 Regulations, a RAN may only be issued in respect of any requirement of the EU Hygiene Regulations that "is being breached" (my emphasis); that is to say, the breach must, according to the Claimants, be ongoing. The Claimants submit that the RAN in this case is defective because it sought to remedy breaches that had already occurred and were no longer extant.

77. I have no hesitation in rejecting that submission. An FBO that repeatedly on separate occasions over a period of time fails to comply with the temperature requirements under Points 1(a) and 3 is breaching Regulation 853/2004. Whether that is described as a continuing breach or a series of separate breaches, the effect is the same in that a requirement of the EU Hygiene Regulations is being breached. Accordingly, the FSA was perfectly entitled to issue a RAN, which would be withdrawn once the authorised officer is satisfied that the required action to remedy the breach has been taken.

Ground 3(c) – The meaning of "process".

78. Finally, the Claimants submit that fresh meat produced at a slaughterhouse is an unprocessed product. As such, it does not undergo any "process" and the reference to such in the RAN is to seek, unlawfully, to impose conditions on something that does not occur at HAL. That renders the RAN a nullity.

79. Mr Hercock drew support for his argument from Regulation 2(3) of the 2013 Regulations, which provide:

> "(3) Unless the context otherwise requires, any expression used both in these Regulations and in Regulation 178/2002 or the EU Hygiene Regulations has the meaning that it bears in Regulation 178/2002 or the EU Hygiene Regulations."

80. Applying that provision, Mr Hercock submits that the word "process", which appears in Regulation 9 of the 2013 Regulations (and in the RAN), must be interpreted conformably with the term "processing" as used elsewhere in the legislative scheme. Furthermore, it is submitted that, in any event, "Dispatch", which was the "process" identified in the RAN, cannot be a "process" within the meaning of the 2013 Regulations because dispatch is not concerned with the processing of meat.

81. It is to be noted that the term "process" is not defined in the 2013 Regulations. Thus, in order for Mr Hercock's argument to succeed, the statutory context must be such that the only proper interpretation of the term "process" is that it refers to a process resulting in the production of a processed food. The difficulty for Mr Hercock is that the term "process" is not used in the 2013 Regulations consistently in that sense:

    i) In Regulation 7 (Hygiene prohibition orders), there is reference to the "the use for the purposes of the business of any process or treatment". Whilst that could refer to processing, it could equally refer to the usual meaning of "process" as any series of actions taken to achieve a particular result. The fact that the term is used in conjunction with the term "treatment" and in the context of "the purposes of the business" supports the latter interpretation.

    ii) In Regulation 9 itself, there is reference to "the carrying out of <u>any</u> process". It is difficult to see why the term "any process" should be limited to mean only those processes associated with the processing of, or processed, food. There will be many "processes" or series of steps to achieve a particular result within any FBO, all of which may have a bearing on food hygiene and safety. It is clear that Points 1(a) and 3 refer to a process, namely the chilling of meat for storage and transportation, that does not deal with processed food. It would create a surprising lacuna in the legislation if a RAN could not be issued to impose conditions on such processes;

    iii) Schedule 3 to the 2013 Regulations refers to "the cleaning process" and "the refining process" in relation to the bulk transport of food cargo. There can be no doubt that "process" is used there in the non-technical sense of a series of steps to achieve a particular result.

82. Thus, there is no compelling reason to interpret the term "process" in the 2013 Regulations and consequently in the RAN in the very narrow way contended for by the Claimants. Indeed, it seems to me that if Mr Hercock were correct, then the FSA would be unable to require remedial action in the form of imposing conditions in respect of many, if not all, of the tasks undertaken in a slaughterhouse that does not deal in processed foods.

83. If it is correct that a "process" for these purposes simply means any series of steps to produce a particular result, then it would include "dispatch".

84. For all of these reasons, permission is refused in relation to Grounds 3(a), (b) and (c).

Conclusion

85. For the reasons set out above, and notwithstanding Mr Hercock's detailed and comprehensive submissions to the contrary, Ground 2(a) of the claim for judicial review is dismissed and permission is refused in respect of the remaining grounds.