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Case No: CO/130/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2019

Before :

LORD JUSTICE GROSS
MR JUSTICE WILLIAM DAVIS

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Between :

LEE QUALTER **COMMERCIAL REDUCTION SERVICES LTD** **COMMERCIAL ENERGY LTD** **ENERGY SEARCH LTD**	**Claimant**
- and - **CROWN COURT AT PRESTON**	**Defendant**
and **CHESHIRE WEST AND CHESTER COUNCIL**	**First Interested Party**
and **BES COMMERCIAL ELECTRICITY LIMITED** **BUSINESS ENERGY SOLUTIONS LIMITED** **BES WATER LIMITED** **COMMERCIAL POWER LIMITED** **ANDREW PILLEY** **MICHELLE DAVIDSON**	**Second to Seventh Interested Parties**

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Chris Daw QC (instructed by **Farleys Solicitors**) for the **Claimant**
Andrew Thomas QC and Anna Pope (instructed by **Adkirk Law)** for the **Interested Party**
Philip Marshall QC and Matthew Morrison (instructed by **Weightmans Solicitors**) for the **Interested Parties**
The Defendant did not appear and was not represented

Hearing dates: 19th June 2019

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Approved Judgment

Mr Justice William Davis:

Introduction

1. This is the judgment of the Court to which we have each contributed.

2. Energy Search Limited, Commercial Reduction Services Limited and Commercial Energy Limited act as brokers between energy companies and small businesses requiring an energy supply. Lee Qualter is a director of all three companies. On 18 December 2018 HH Judge Mark Brown sitting in the Crown Court at Preston granted production orders pursuant to Section 345 of the Proceeds of Crime Act 2002. The orders were made on the application of Cheshire West and Chester Council ("CWAC"). They provided access to financial material in relation to the three companies and to personal and business accounts held by Lee Qualter and a man named Darren Martindale. The precise terms of the orders are not relevant in these proceedings.

3. The three companies and Lee Qualter seek judicial review of Judge Brown's granting of those orders. Their case is that CWAC had no power to make an application for production orders pursuant to Section 345 of the 2002 Act. A production order under Section 345 can only be made in relation to a party who is subject to a confiscation investigation or a money laundering investigation. The Claimants' case is that any such investigations by CWAC were ultra vires. Mr Martindale, the other party against whom production orders were made, is not party to these proceedings and does not seek judicial review.

4. The Second and Third Interested Parties are energy supply companies (to which we shall refer collectively as "BES") with which the Claimants dealt. Andrew Pilley and Michelle Davidson are the directors of those companies. The Fourth Interested Party was intending to commence trading as a non-domestic water supplier. Because it was linked to BES and because BES was and is under investigation by CWAC, no such trading has taken place. The Fifth Interested Party trades as an energy aggregator. Its purpose notionally is to act as an intermediary between brokers and suppliers so that brokers can offer the best tariffs to customers. Andrew Pilley and Michelle Davidson are also the directors of that company.

5. CWAC is a local authority. As its name indicates its primary responsibility is to provide local authority services to the inhabitants of a substantial part of Cheshire including the City of Chester. In the case of CWAC this includes enforcement of

trading standards. Officers employed by CWAC have been undertaking and continue to undertake investigations into the trading activities and practices of the Claimants and of the Second to Seventh Interested Parties.

The structure of trading standards regulation and investigations

6. The regulation of trading practices has its origins in the policing of weights and measures. Regulation of weights and measures has a very long history. From the nineteenth century control of weights and measures was assumed by municipal and other local authorities. The ambit of the weights and measures departments in local authorities gradually widened as they assumed more statutory responsibilities. So it was that they assumed the title of trading standards.

7. Trading standards officers working for local authorities came to be responsible for safeguarding the interests of consumers and businesses via a wide range of legislation covering environmental health, licensing and unfair trading. The extent to which any individual authority engaged in such safeguarding activity varied widely. As the House of Commons Committee of Public Accounts reported in November 2011 some areas had as few as two trading standards officers while other authorities employed over a hundred officers.

8. In addition, enforcing consumer protection simply via individual local authority trading standards officers could not keep pace with the changing landscape of business activity. When trading was a local activity and consumers tended to lose money due to a single instance of trading malpractice, the structure based on the historic model of a local weights and measures inspector was sufficient to protect consumers. This did not apply once companies were able to engage with consumers nationally. Initially this was via telephone marketing and sales. More recently online activity has become dominant.

9. In 1973 the Fair Trading Act established the Office of Fair Trading which was empowered to engage in investigation and prosecution of nationwide rogue trading and consumer fraud. However, that office focused on protection of consumers from problems caused by new and emerging markets or from lack of effective competition. It had a particular remit in relation to cartels. Many cases with a national profile were not regarded as sufficiently important to be taken on by the Office of Fair Trading. The report of the House of Commons Public Accounts Committee to which we already have referred considered that "enforcing consumer protection has not kept pace with the changing nature of the problems it is intended to tackle". It recommended that there should be reform of the enforcement system for dealing with trader malpractices occurring at a regional or national level. The Committee noted that the Government was in the process of consulting on reforming consumer law enforcement. It urged the Government to address the detailed proposals in its report.

10. Reform of consumer law enforcement followed. In 2012 the Office of Fair Trading was abolished. Its strategic functions passed to new statutory bodies which do not concern us. Responsibility for delivering consumer protection related work with a national or regional scope was given to a body entitled National Trading Standards ("NTS"). NTS is not a public body nor is it a legal entity. It operates via a board consisting of trading standards officers from different parts of England and Wales. It is funded by central government. The department currently responsible for providing the budget of NTS is the Department for Business, Energy and Industrial Strategy following the merger of the Department for Business, Innovation and Skills, the

department initially given this responsibility, with the Department of Energy and Climate Change. In 2018/2019 the annual grant to NTS (paid via the Chartered Trading Standards Institute which is a registered company) was £12,961,000. The grant was expressed as being intended to support inter alia the objective of delivery and coordination of national enforcement projects in relation to consumer protection.

11. The grant letter of 23 April 2018 setting out the terms of the 2018/2019 annual grant stated that the grant was provided to support "the delivery of national and cross-local consumer enforcement work". One method of enforcement identified in an annex to the grant letter was the work of Regional Investigation Teams. The desired outcome of their work was taking "effective action against rogue traders whose cross-regional activities are beyond the reach of individual local authorities". Within the key performance indicators to be met by NTS was "commissioning local authorities to undertake national prosecutions where appropriate".

12. Although this grant letter significantly post-dates the matters with which we are concerned, we are satisfied that the nature and purpose of NTS and the work done by Regional Investigation Teams has not changed since NTS was established in 2012. The NTS Annual Business Plan for 2018/2019 set out the core strategic objectives of that body. Each was described as a long-term objective and function of NTS. One stated objective was to "ensure effective delivery and co-ordination of national and cross-boundary enforcement projects in relation to serious consumer crime (including eCrime and business to business fraud) and mass marketing scams".

13. NTS does not conduct its own investigations. It does not engage in the work of trading standards enforcement. Rather, it commissions and funds Regional Investigation Teams. Those teams initially were known as scambuster teams before being given a more formal name. There are seven such teams across England and Wales. Each team is based within a particular local authority and those working as a part of the team will be employed by or seconded to that local authority. As with NTS, Regional Investigation Teams do not have any independent legal status or persona. Cases will be referred to NTS for funding whether by individual local authorities or by a Regional Investigation Team.

14. In the North West Region (covering Lancashire, Cheshire, Merseyside and Greater Manchester) all of the local authorities within the region carrying out trading standard functions in 2012 signed a protocol entitled "Protocol for Trading Standards North West Scambuster Investigations". This was intended to put into effect a scheme for utilising funds made available by NTS. The protocol identified CWAC as the lead partner for the Regional Investigation Team (or scambusters team as it was then known). The essence of the protocol was that all of the local authorities in the North West of England agreed that investigation of region-wide rogue trading would be carried out by CWAC as the host of the Regional Investigation Team. Thus, the other local authorities delegated their trading standard functions and powers to CWAC in relation to cases to be funded by NTS.

15. We shall return in due course to the legal framework relating to the powers of local authorities. It is appropriate at this point to note that neither the administrative structure of NTS and Regional Investigation Teams nor resource considerations could of themselves provide any local authority with any additional powers. Local authorities are creatures of statute. They can only do those things that statutorily they are empowered to do or things reasonably ancillary or incidental to those powers.

The factual background

16. We begin our consideration of the factual background with a warning. The allegations against the Claimants and the relevant Interested Parties remain just that. No charges have yet been laid – though we were told that a charging decision is anticipated at some point in the autumn of this year – and there has not been even a preliminary consideration by any court of the merits (if any) of the case against any of the parties. It will be necessary for us to refer in outline to the allegations in order properly to inform our consideration of CWAC's powers. In doing so we express no view at all on whether the allegations will be made out hereafter.

17. In the later part of 2011 and the first months of 2012 the trading standards service of Blackpool Council received complaints about the activity of Commercial Energy Limited and BES. The evidence does not disclose the nature of the complaints. However, they resulted in two meetings attended by trading standards officers from Blackpool Council. The first was at the offices of Commercial Energy in Darwin Court, Blackpool. The officers expected to meet Mr Qualter as the director of the company. In fact, they met Andrew Pilley who told the officers that he was representing Mr Qualter who unexpectedly was unavailable. It was apparent to the officers that Mr Pilley had a good knowledge of Commercial Energy's business and was closely associated with it. The second meeting was at the offices of BES in Fleetwood which is in Lancashire. On this occasion both Mr Pilley and Mr Qualter were present. Trading Standards in Blackpool took the matter no further after the middle of the summer of 2012.

18. During 2013 Trading Standards in Lancashire received complaints about BES i.e. the company with offices in Lancashire. As the complaints were monitored and followed up it became apparent that the predominant issue was alleged mis-selling initiated by brokers i.e. the Claimant companies. The most frequent allegation was that a small business would be telephoned by someone purporting to be from their current energy supplier to say that the current supplier no longer could continue to supply the business and that BES was the recommended alternative. Other complaints involved false rate comparisons and the supposed risk of disconnection.

19. In December 2013 an investigating officer, Sam Harrison, was appointed to conduct a preliminary investigation. He sent questionnaires to those who had made complaints to obtain more details. He spoke to Blackpool Trading Standards about the contact that officers had had in 2012. He contacted the energy market regulator (OFGEM) and discovered that the regulator was aware of mis-selling allegations. The regulator was investigating BES as the holder of an energy licence. The brokers were and are outside the statutory remit of the regulator.

20. When completed questionnaires had been returned it was determined that the investigation should be taken further. The initial focus of the investigation was to consider potential breaches of the Business Protection from Misleading Marketing Regulations 2008 ("the 2008 Regulations"). Mr Harrison took statements from some of the complainants who had completed questionnaires and made successful applications in March and May 2014 for authorisation to obtain telephone data relating to the companies involved. We note that in those applications it was said that the offences under investigation were misleading advertising pursuant to the 2008

Regulations and fraud by false representation contrary to Section 2 of the Fraud Act 2006.

21. By June 2014 Lancashire Trading Standards were liaising with the Regional Investigation Team (i.e. officers of CWAC) with a view to obtaining assistance with specialised investigative assistance. On 4 September 2014 Lancashire decided that the case no longer was suitable to be retained by Lancashire Trading Standards. It was referred in its entirety to NTS in order for an investigation by the Regional Investigation Team to be fully funded.

22. The written application to NTS was submitted in November 2014. We have been provided with a copy of that document. It stated that Lancashire had received 186 complaints between April 2013 and July 2014 with further referrals from regulatory and trade bodies. The geographical spread of complaints was very wide. Small businesses from 80 different local authority areas were affected. A significant number of complainants was based in the North West but by no means the majority. Lancashire was the recipient of the complaints because BES was based in Lancashire and the broker companies were based in the neighbouring authority, Blackpool. The application indicated that there were potential offences contrary to the 2008 Regulations, it being said that there was some urgency in relation to some of those allegations because of time limits. The application went on to state "Fraud Act 2006/Fraudulent Trading offences are also potential offences". Discussion of potential offences at other points within the application referred to "Fraud Act 2006 and fraudulent trading" and "possible fraud offences". The application stated that "the complexity of this case and the required resources go beyond the capability of a local trading standards service".

23. NTS agreed to fund the investigation and required the North West Regional Investigation Team (CWAC) to conduct the investigation. As part of the investigative process in July 2016 CWAC obtained warrants to search and seize material from the premises of BES, Commercial Power Limited and Andrew Pilley i.e. the 2nd, 3rd, 5th and 6th Interested Parties in these proceedings. Execution of those warrants led to the retrieval of a very large amount of digital material from devices held by those parties. Such retrieval was pursuant to Part 2 of the Criminal Justice and Police Act 2001. In due course there was an application by those parties for return of copied data not consistent with the warrants, the physical devices having been returned. The application was heard in July 2017 by HH Judge Mark Brown i.e. the same judge with whose decision we are concerned. The judge applied a practical capability test to the requirement for CWAC to separate out the data which was within and outside the scope of the warrants. BES, Commercial Power Limited and Andrew Pilley applied for judicial review of the judge's decision arguing that he should have made an order based on a test of physical/technical capability. In June 2018 this court determined that application: see *BES and others v Preston Crown Court [2018] EWHC 1534 (Admin)*. The Claimants in that claim were represented by the same counsel as appeared before us for the 2nd to 7th Interested Parties in these proceedings. This court upheld the decision of the judge. The reasoning of the court in that case is of no relevance to these proceedings. However, it is to be observed that the various arguments put to this court on that occasion did not include any challenge to the vires of the investigation being conducted by CWAC. CWAC was an active participant in those proceedings as an interested party. Moreover, the nature and scope of CWAC's investigation was known to the Claimants in this earlier claim.

The applications for production orders

24. The applications with which we are concerned were first made in March 2018 ex parte. Judge Brown at the ex parte hearing required the applications to be made on notice. The applications were served on 20 April 2018. This was 10 days before the hearing on 1 May 2018 of the application for judicial review of the earlier decision in relation to the material seized on execution of the warrants.

25. The applications were supported by a sworn statement of Christopher Jeffs, a financial investigator employed by CWAC and attached to the Regional Investigation Team. He stated that Mr Qualter, Mr Martindale and the companies, the Claimants in these proceedings, were subject to a fraud investigation. As such he had considered whether the appropriate course would be to make an application under the Police and Criminal Evidence Act 1984. Such an application would have been made with support from Lancashire Constabulary since the special procedure pursuant to Schedule 1 of that Act can only be invoked by a constable. However, he said that he had reasonable grounds to suspect that the Claimants had committed money laundering offences given the nature of the alleged fraud. So it was that he made the application pursuant to the Proceeds of Crime Act 2002.

26. On 6 June 2018 the Claimants served a detailed written response to the applications. The nature and extent of the investigation by CWAC was recognised. The response referred to the judicial review proceedings in which the hearing had taken place on 1 May 2018. Two arguments were raised by way of objection to the applications. First, it was said that the applications failed to show reasonable grounds for suspecting that the Claimants had committed a money laundering offence. Second, it was argued that CWAC had not satisfied its duty of disclosure. The Claimants' case was that CWAC were obliged to disclose undermining material and that CWAC had not acknowledged this obligation.

27. The first listing of the inter partes hearing of the applications for production orders was on 22 June 2018. This was vacated on 18 June 2018 at the request of counsel for the Claimants. It was further listed on 18 October 2018. It was ineffective because of lack of court time. On 9 October 2018 the Claimants had served an addendum to their response. This raised for the first time the issue of CWAC's power to conduct the investigation into fraud and money laundering as described in the evidence of Mr Jeffs. The addendum did not set out why CWAC did not have any such power. Rather, it argued that it was for CWAC to justify its position and to identify the statutory basis of its power to investigate. Absent this the applications ought to be refused.

28. The hearing eventually took place on 17 and 18 December 2018. Judge Brown gave two judgments in the course of the hearing. The second judgment related to the substantive merits of the applications for production orders. It followed a lengthy hearing in which Mr Jeffs gave evidence. The judge considered the argument that CWAC had failed to establish any reasonable grounds to suspect fraud or consequent money laundering by Mr Qualter or his companies. After a careful analysis of the evidence he had heard and the documentary material he had seen, the judge dismissed that argument. There is no challenge to that part of his decision.

29. The first judgment concerned the vires issue first raised in the addendum response of 9 October 2018. The judge's attention was drawn to Section 222 of the Local Government Act 1972 dealing with the power of local authorities to prosecute or defend legal proceedings together with the statutory power of local authorities to delegate any of their functions to another local authority. It does not appear to us that he was referred to any decided authority. None is cited in his judgment. Judge Brown concluded that CWAC did have the power to investigate and prosecute such offences because it had appropriate delegated authority to do so by reference to the protocol to which we already have referred. The judge found that the offences took place in Lancashire since that is where the relevant companies were based. Lancashire thereby had the power to investigate and prosecute the companies and the directors of the companies. It was entitled to delegate that power to investigate and prosecute to CWAC.

The legal framework

30. As we already have observed any local authority is a creature of statute. Where a local authority acts beyond its powers, it will be acting ultra vires. The following statutory provisions potentially are relevant to the circumstances of this case.

31. The principal statutory regime with which we are concerned is the Local Government Act 1972. Section 222(1)(a) of that Act reads as follows:

(1)Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—
(a)they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name………

Section 111 of the 1972 Act provides as follows:

(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.

Finally, Section 101(1) of the 1972 Act is in these terms:

(1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions —
(a) by a committee, a sub-committee or an officer of the authority; or
(b) by any other local authority.

32. The Localism Act 2011 also is of relevance. Section 1 of that Act insofar as it is relevant is in these terms:
(1)A local authority has power to do anything that individuals generally may do.
(2)Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise-
(a)unlike anything the authority may do apart from subsection (1), or
(b)unlike anything that other public bodies may do.
(3)In this section "individual" means an individual with full capacity.

(4)Where subsection (1) confers power on the authority to do something, it confers power (subject to sections 2 to 4) to do it in any way whatever, including-
(a)power to do it anywhere in the United Kingdom or elsewhere,
(b)power to do it for a commercial purpose or otherwise for a charge, or without charge, and
(c)power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.
(5)The generality of the power conferred by subsection (1) ("the general power") is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

This general power is qualified in Section 2 of the 2011 Act as follows:
(1)If exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power.
(2)The general power does not enable a local authority to do-
(a)anything which the authority is unable to do by virtue of a pre-commencement limitation, or
(b)anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply-
(i)to the general power,
(ii)to all of the authority's powers, or
(iii)to all of the authority's powers but with exceptions that do not include the general power……
(4)In this section-

- *"post-commencement limitation" means a prohibition, restriction or other limitation expressly imposed by a statutory provision that-*

(a) is contained in an Act passed after the end of the Session in which this Act is passed, or
(b)is contained in an instrument made under an Act and comes into force on or after the commencement of section 1;

- *"pre-commencement limitation" means a prohibition, restriction or other limitation expressly imposed by a statutory provision that-*

(a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or
(b) is contained in an instrument made under an Act and comes into force before the commencement of section 1;

- *"pre-commencement power" means power conferred by a statutory provision that-*

(a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or
(b) is contained in an instrument made under an Act and comes into force before the commencement of section 1.

33. We were invited by CWAC to consider the effect of the Consumer Rights Act 2015 on the vires of their investigation. Paragraph 46 of Schedule 5 of that Act is in these terms:

(1)A local weights and measures authority in England or Wales may bring proceedings for a consumer offence allegedly committed in a part of England or Wales which is outside that authority's area.
(2)In sub-paragraph (1) "a consumer offence" means-
(a)an offence under legislation which, by virtue of a provision listed in paragraph 10 of this Schedule, a local weights and measures authority in England or Wales has a duty or power to enforce,
(b)an offence under legislation under which legislation within paragraph (a) is made,
(c)an offence under legislation listed in the second column of the table in paragraph 11 of this Schedule in relation to which a local weights and measures authority is listed in the corresponding entry in the first column of the table as an enforcer,
(d)an offence originating from an investigation into a breach of legislation mentioned in paragraph (a), (b) or (c), or
(e)an offence described in paragraph 36 or 37 of this Schedule.
Offences under the 2008 Regulations are consumer offences listed in paragraph 10 of the 2015 Act. This provision permits a local authority to bring proceedings for a consumer offence allegedly committed outside that local authority's area. A local authority also is permitted to bring proceedings for an offence originating from an investigation into alleged breaches of the 2008 Regulations.

34. We shall not consider the effect of the 2015 Act and whether it would provide CWAC with the power to bring proceedings for offences of money laundering. It was not an issue raised in the course of the hearing before Judge Brown. It was not raised in the detailed grounds of response filed by CWAC save as follows:
"Specific powers for the investigation and prosecution of consumer protection offences (including business to business crime) are set out in relevant statutes and statutory instruments, including the Consumer Rights Act 2015. It is unnecessary to consider them in detail within these detailed grounds."
It was only in the Skeleton Argument filed by CWAC on 5 June 2019 – two weeks prior to the full hearing before us - that it was argued that the 2015 Act removed any geographical restriction on a local authority to prosecute consumer offences and, more significantly for the purposes of these proceedings, offences originating from an investigation into consumer offences. No clear submission was made on the effect of the phrase "an offence originating from an investigation" into a consumer offence. By implication (but no more than that) we understood the proposition to be the provisions of Schedule 5 of the 2015 Act would encompass offences discovered in the course of an investigation into consumer offences. This argument was raised very late in the day. In the skeleton argument it was not developed other than in vague terms. For those reasons we do not consider it appropriate to consider the argument any further.

35. The 2nd to 7th Interested Parties responded in writing to CWAC's skeleton argument. They argued that the proposition that "originating from" is to be interpreted as "discovered in the course of" (if that was the submission made by CWAC) was flawed. They also argued that the 2015 Act does not override the expediency test set out in Section 222(1) of the 1972 Act. Whether these submissions are correct is for another day and another case. The provisions of the 2015 Act will not inform our decision in this case.

The competing submissions

36. On behalf of the Claimants Mr Daw QC submitted that CWAC were undertaking a national fraud and money laundering investigation which they had no power to do. He argued that such an investigation was wrong in principle. He went on to submit that, even if a local authority based in the North West notionally did have the power to conduct such an investigation, no consideration had been given at any point by any local authority to the expediency test in Section 222(1) of the 1972 Act. Finally, he argued that, even if a local authority in the North West such as Lancashire had lawfully commenced an investigation into the activity of the Claimants, the delegation of that investigation to CWAC was unlawful.

37. Mr Daw supported his legal analysis by referring to the circumstances of the investigation. It had begun by 2014 at the latest yet no charges had been brought some 5 years later. This demonstrated the inherent unsuitability of CWAC to conduct such an investigation and supported the proposition that CWAC was not empowered to investigate allegations of national fraud and money laundering. He also argued that there had been a lack of candour in the approach taken by CWAC both in the hearing before Judge Brown and in these proceedings.

38. On behalf of the 2nd to 7th Interested Parties Mr Marshall QC argued that CWAC could not suggest that the investigation they were conducting would promote or protect the interests of the residents of Cheshire. Thus, they only could act lawfully if there had been a lawful delegation of the power to investigate offences of fraud and money laundering by a local authority for whose residents such an investigation would be expedient. Mr Marshall submitted that the decision to delegate had been in respect of offences under the 2008 Regulations. Thus, the claim for judicial review should succeed without more. He further argued that there had been no decision by Lancashire County Council to prosecute the Claimants or any other party in which event no power to delegate or to investigate could arise. Such ancillary powers could only be exercised if and when such a decision had been taken.

39. Mr Marshall went on to argue that, even if CWAC were in a position to say that they were able to prosecute, this type of case is not suitable for prosecution by a local authority. He relied on what the Court of Appeal Criminal Division said in *R v AB and others* [2017] 1 WLR 4071. Mr Marshall said that this case was a first in terms of local authority prosecution. It related to fraud and money laundering rather than trading standards offences.

40. Mr Thomas QC on behalf of CWAC submitted that there was nothing exceptional or unusual about the investigation being undertaken. Fraud in its various manifestations is the bread and butter work of modern trading standards departments. There was a clear distinction between the circumstances in *AB* and the investigation in this case. In relation to the expediency test under Section 222 of the 1972 Act this was satisfied because the businesses under investigation were based in the North West, in particular in Lancashire and Blackpool. The inhabitants of those areas had an interest in Lancashire and Blackpool not being used as a centre of fraudulent activity. CWAC was conducting the investigation pursuant to legitimate delegated powers. Mr Thomas also argued that it was in any event premature for CWAC or any local authority in the North West to make a decision as to whether the expediency test was met. This test related to prosecuting or defending or appearing in any legal

proceedings. Before the decision could be made, the local authority had to investigate in order to gather evidence. The decision could only be properly made in the light of the evidence. Finally Mr Thomas relied on Section 1 of the Localism Act 2011 as providing CWAC with the power to investigate.

The relevant authorities

41. Before we discuss the competing submissions, we shall review the relevant authorities as cited to us in relation to the nature and extent of the power of a local authority in the context of fraud and/or criminal proceedings. We observe that none of the authorities purports to deal with the lawfulness of an investigation by a local authority as opposed to whether a local authority had the power to prosecute or appear in proceedings. This is unsurprising given the language of Section 222(1) of the 1972 Act. Equally, it may be of significance in determining the assistance to be gained from the authorities.

42. In *London Borough of Barking and Dagenham v Jones* [1999] All ER (D) 923 CA the Court of Appeal was concerned with the legitimacy of injunctive relief sought by the local authority against a trader in office supplies who operated from premises in the area covered by the local authority. The trader conducted his business via telesales, his salesmen making cold calls to businesses offering to supply printer supplies. The salesmen were instructed to make and did make false claims about the longevity of ink cartridges to be supplied. Over a period of around 5 years the trader was prosecuted to conviction for trading standards offences on a dozen or more occasions at courts around the country. He continued to trade in a fraudulent manner throughout. As a result the local authority for the area in which his business was based sought an injunction restraining the trader from engaging in certain specific fraudulent practices. The judge at first instance refused to grant injunctive relief. This decision was reversed by the Court of Appeal. One of the reasons relied upon by the judge in refusing to order an injunction was that the proceedings were not expedient for the promotion or protection of the interests of the inhabitants of the local authority area. There was no satisfactory evidence of any business within the area being the victim of the trader's fraud. This reasoning was rejected by the Court of Appeal.

43. Lord Justice Brooke gave the judgment on this issue as follows:

Section 222 of the Local Government Act 1972 gives a local authority power to bring proceedings like these in their own name where they "consider it expedient for the promotion or protection of the interests of the inhabitants of their area". It is for the local authority to make this judgment, not for the court, and the judge misdirected himself as to his proper role when he questioned whether the inhabitants of Barking were truly being served by the issue of these proceedings in the way which the section required, and impliedly gave the answer "no" to that question.

In Mole Valley DC v Smith [1992] 24 HLR 442 Lord Donaldson MR said at p 450:

"... It is not for the courts in these proceedings to review the decision of the respondent councils under Section 222 of the Local Government Act 1972. ... where the balance of the public interest lies is for the respondent councils to determine and not for this court."

The judge was influenced by the fact that in ***all*** *the papers before the court there was only one, not very convincing, example of a telesale transaction which had given rise*

to a complaint in relation to a person who lived (but did not work) in the Barking area. In my judgment there was ample evidence to justify the council using its powers under Section 222 if it saw fit to do so. ***All*** *this unremitting criminal activity was being conducted from premises within the council's area. It was the council alone which had the power under the Trade Descriptions Act to enter, seize and search. The council was entitled to consider that it was in the interests of the inhabitants of its area that these criminal activities, which could well be giving the area a bad name, should be brought to an end, particularly as* ***all*** *businesses in its area could be at risk of Mr Jones's frauds. The council was also entitled to take financial considerations into account, and to consider that it was in the interests of the inhabitants of its area that it should be able to divert more of its skilled resources away from policing the criminal activities of one man towards other public protection duties in enforcing trading standards laws more effectively in its area.*

Although this was a decision in the context of civil injunction proceedings the expediency test applied. It supports the proposition that the interests of the inhabitants of an area are not restricted to their own direct economic interests.

44. A similar approach was adopted by Mr Justice Phillips in *Oldham Borough Council v World Wide Marketing Solutions* [2014] EWCA 1910 QB. This case also concerned the application by a local authority for injunctive relief against a trader who engaged in telesales directed at small businesses. The facts are of no particular assistance to our determination of this claim but the judge, in granting injunctive relief, emphasised that Section 222(1) is widely worded and that the local authority is not limited to considering activities directly affecting the inhabitants of its area.

45. In *R (on the application of Donnachie) v Cardiff Magistrates' Court and Cardiff City Council* [2009] EWCA 489 (Admin) the same issue arose in the context of criminal proceedings. Donnachie was an officer of a taxi company called Supatax based in Cardiff which sold its redundant taxis at auctions in Newport and Gloucester. Prior to sale taxis had been "clocked". This process had taken place at the taxi company's premises in Cardiff but the consequent application of the false trade descriptions was committed at the point of sale in Newport or Gloucester. This court considered a challenge to the validity of the informations laid by Cardiff City Council in the Cardiff Magistrates' Court. The challenge was based on the fact that the offences were not committed in Cardiff. The argument was that the expediency test could not be met. Mr Justice Sweeney giving the judgment of the court said this:

Given the nature of Supatax's business, and the closeness of its connection with Cardiff and its inhabitants, on the facts of this case it was, in my view, self-evidently in the interests on the inhabitants of Cardiff for the Claimant to be prosecuted in respect of Supatax's alleged offences in Gloucester and Newport.

This is a further example of the approach as taken in the cases involving injunctive relief. The essence of the approach is that a local authority's inhabitants have an interest in the businesses within the area operating legitimately and honestly.

46. The Claimants and the 2nd to 7th Interested Parties argue that the decision of this court in *Brighton and Hove City Council v Woolworths* [2002] EWHC 2565 (Admin) supports their position in relation to the test of expediency. They argue that the facts in that case are more apposite to the circumstances with which we are concerned than those in *Donnachie* and the injunctive relief cases. Woolworths was a well known national company. Brighton and Hove Council had served a suspension notice on

Woolworths at its head office in London under Section 14 of the Consumer Protection Act 1987. The effect of the notice was to prohibit the sale of a particular type of toy scooter at any of its outlets. Woolworths sold the relevant toy in breach of the suspension notice at three of its outlets in different parts of the country away from Brighton and Hove. Brighton and Hove Council sought to prosecute the company for those breaches of the suspension notice. The magistrates' court dismissed the informations because there was no proof of delegation of the power to prosecute by the local authorities where the breaches had occurred. In this court Brighton and Hove Council sought to circumvent the lack of evidence of delegation by submitting that they had issued the suspension notice and that they and they alone had the power to prosecute breaches of the notice wherever they may have occurred.

47. The court rejected that argument. In the course of his judgment Mr Justice Field said this:

It follows, in my view, that South Gloucestershire, East Sussex and London had the power to prosecute for the alleged breaches of the suspension notice which occurred in their areas and that the appellant had no such power. I also accept Mr Haggan's submission that the appellant had no power to prosecute in its own right breaches of the suspension notice which occurred outside its area because such a prosecution could not ex hypothesi be expedient for the promotion or protection of the interests of the inhabitants of its area as required by section 222(1) of the 1972 Act.

Mr Justice Field did not expand on this bald statement relating to expediency. It cannot be relied on as a general statement of principle given what was said in *AB and others* to which we shall turn shortly. Moreover, it seems to us that the facts are not so close to the present case as is suggested. Woolworths was a national organisation with no particular connection to Brighton and Hove. Any breach of a suspension notice by that company in (say) South Gloucestershire would have had no impact on the interests of the inhabitants of Brighton and Hove. Moreover, the case before the magistrates was conducted on the basis that Brighton and Hove Council was acting by way of powers properly delegated by the other local authorities. By definition that case assumed that Brighton and Hove Council did not have the power to prosecute in its own right. The case put before this court was precisely the opposite. It is hardly surprising that the court was unimpressed by the arguments of Brighton and Hove Council which depended on such a volte face.

48. In *AB and others* the Court of Appeal Criminal Division was concerned with the ambit of Section 222(1) of the 1972 Act in the context of an appeal from a ruling made in a preparatory hearing. The court reviewed the authorities to which we have referred. In relation to the *Woolworths* decision, the court said at paragraph 50:

In so far as it was suggested in Woolworths (at para 33) that a breach outside a local authority's area could "ex hypothesi" not be expedient for the purpose of section 222, it was wrongly decided…….

The approach taken in the injunction cases, in particular that of Mr Justice Phillips in the *Oldham* case, was specifically approved. At paragraph 52 the court in *AB and others* said:

Each case will turn on its own facts but, as we have said, the court should be slow to interfere, given the very broad power given to a local authority under section 222 .

It follows that the *Woolworths* case provides no assistance in determining the outcome of this claim.

49. However, the Claimants and the 2nd to 7th Interested Parties argue that the facts in *AB and others* are on all fours with the circumstances in this case. The outcome in *AB and others* was a finding that the local authority had prosecuted allegations of fraud and perverting the course of public justice when they had no power to do so pursuant to Section 222(1) of the 1972 Act. Thus, it is submitted, the same should follow in this case. This proposition requires examination of the facts in *AB and others*. The local authority involved was Thurrock Council, a unitary authority in Essex. In 2013 the local authority had established a Fraud Investigation Department ("FID"). The FID was described as a counter fraud and criminal investigation service responsible for the prevention, detection and deterrence of economic crime committed against the public purse. It employed 26 people trained to the same standard as police officers involved in investigation of complex crime. Unlike a trading standards department of a local authority, the FID did not purport to fulfil any ordinary function of a local authority.

50. Presumably in order to market its services the FID shortly after it had been established made a presentation at a conference concerned with fraud prevention. An official of the Legal Aid Agency ("LAA") had been present at the conference as a result of which he contacted the FID. Initially this was in order to obtain forensic computing advice in relation to suspected fraud. Within a matter of weeks the FID had been commissioned to conduct a full investigation into a suspected fraud on the legal aid fund involving some £6 million by a firm of solicitors in London. From the end of 2013 the FID carried out the investigation. In due course, the prosecution was commenced by Thurrock Council.

51. When the case was sent to the Crown Court, the defendants sought a ruling from the trial judge at the preparatory hearing in relation to the locus of Thurrock Council to prosecute allegations of fraud and associated offending by a firm of solicitors in London. The judge ruled that Thurrock Council came within the provisions of Section 222(1) of the 1972 Act. The evidence before the judge came from the head of the FID who set out various factors which he said were an indication that the prosecution was in the interests of the inhabitants of Thurrock. The judge accepted that three of the factors taken together satisfied the expediency test: the legal aid system is provided to all citizens including those of Thurrock and the Council's joint work with the LAA would be in the interest of those in the Council's borough to protect the fund from abuse; the LAA would be funding the resources in the FID assigned to investigate its matters, with their time shared for preventing and detecting fraud in Thurrock; the LAA was to provide the equivalent of two full time staff to the Council to work on this investigation and any fraud matters in Thurrock.

52. The Court of Appeal rejected the reasoning of the judge. The court concluded that preventing fraud on the legal aid fund was in the interests of UK taxpayers generally. For Section 222(1) of the 1972 Act to apply, the prosecution had to engage the interest of Thurrock residents in their capacity as such, not just as ordinary UK citizens. It did not do so. The firm allegedly engaged in the fraud was unconnected to Thurrock. No inhabitants of Thurrock were directly or indirectly affected by the alleged fraud. The court further decided that financial advantage could not justify a local authority setting up as a prosecution service. Thus, the court concluded that the prosecution was unlawful. The court also rejected the argument that Thurrock

Council had an unfettered right to prosecute whether at common law or by operation of the Localism Act 2011.

53. The circumstances in *AB and others* were very different to the facts of this case. Thurrock Council in effect had set up a commercial investigative agency which could gather evidence of financial crime on behalf of another party with a view to the local authority then prosecuting alleged offences revealed by the investigation. It was not part of any national strategy. It was unconnected to any of the local authority's ordinary functions. No issue of delegation by another local authority arose since the activity was not allied to the protection or promotion of the inhabitants of any particular local authority.

54. It is of significance that the court in *AB and others* emphasised that the objection taken by the defendants was in relation to the decision to prosecute. It was noted more than once that no point was taken on the power of Thurrock Council to investigate. The court did not suggest that this approach was inappropriate or incorrect. The unlawfulness arose from the taking of proceedings when the requirements of Section 222(1) of the 1972 Act were not met.

55. The Claimants and the 2nd to 7th Interested Parties submit that the lawfulness of an investigation should be allied to the lawfulness of a proposed prosecution. Section 111 of the 1972 gives a local authority *"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."* It is argued that, by analogy with *R v Richmond on Thames LBC ex parte McCarthy & Stone (Developments) Ltd* [1992] 2 AC 48, the power to investigate only arises if the local authority has the power to prosecute i.e. satisfies the expediency test. *McCarthy & Stone* involved a challenge to the imposition of a charge by a local authority for pre-planning advice. The giving of such advice was not a function of the local authority. Thus, to charge for such advice was not "incidental to the discharge of any of their functions". The facts in *McCarthy & Stone* are far removed from the circumstances of this case. Moreover, the charge levied by the local authority was in relation to something which could not ever be a function of that authority. Here, the activity of investigating the alleged offending was a precursor to the prosecutorial function of CWAC. That CWAC had such a function is not in doubt. The submission based on *McCarthy & Stone* cannot overcome the observations in *AB and others*.

Discussion

56. The starting point is to underline that we are concerned with an *investigation* not a prosecution. The cornerstone of the Claimants' case as supported by the 2nd to 7th Interested parties, however, is the proposition that the expediency test in Section 222(1) of the 1972 Act has not been met in which event the investigation being conducted by CWAC must be unlawful. We have no hesitation in rejecting the premise on which that proposition is based, namely that the statutory test applies to an investigation by a local authority into alleged criminal activity. Section 222(1) applies to the prosecution of or appearing in legal proceedings. This does not encompass an investigation nor applications made for an investigatory purpose. The

applications for the warrants in 2016 and the applications with which we are concerned were not required to satisfy the test contained within Section 222(1).

57. The argument that CWAC's failure to have made a decision as to the expediency of any prosecution must render any investigation unlawful similarly must fail. Since CWAC have yet to make any decision to prosecute, there can be no requirement on CWAC (or any local authority which may have delegated its power to take proceedings to CWAC) to show that a prosecution would be expedient to promote or protect the interests of the inhabitants of the area of the relevant local authority. At the stage of conducting an investigation it is most unlikely to be known whether a prosecution will (as opposed to might) be expedient within the meaning of s.222(1). The submission that the claim for judicial review must succeed because of the lack of any consideration of the expediency test is likewise misconceived. This conclusion follows from the unequivocal terms of Section 222(1) of the 1972 Act. Our conclusion is supported by the approach of the Court of Appeal in *AB and others*.

58. Next, what power do CWAC have to engage in the investigation of the Claimants and the 2nd to 7th Interested Parties and their alleged criminal activity involving fraud and money laundering? As it seems to us, CWAC plainly have such a power. This is by way of one or more of Section 1 of the Localism Act 2011, Section 101 of the 1972 Act and Section 111 of the 1972 Act. We take these provisions in turn.

59. Section 1 of the Localism Act 2011 gives a general power of competence to local authorities. This provision replaced what was known as the well-being provisions of the Local Government Act 2000. Section 2 of the 2000 Act gave a local authority power to do anything which it considered likely to promote or improve the economic, social and environmental well-being of their area. The power was limited by Section 3 of the 2000 Act in that a local authority was not enabled to do anything it was unable to do by reason of some other statutory restriction. The width of those provisions was reduced significantly by the interpretation put on them in *Brent LBC v Risk Management Partners* [2009] EWCA Civ 490. In that case two London local authorities participated in the setting up of a mutual insurance scheme which was intended to reduce their insurance costs. They purported to do by virtue of the power in Section 2. The court concluded that they did not have such power.

60. Lord Justice Moore-Bick (at [180]) explained the position in this way:

In my view section 2 gives a local authority power to take steps that have as their object, direct or indirect, some reasonably well defined outcome which it considers will promote or improve the well-being of its area. In other words, it gives authorities the power to do things themselves, or to procure or enable others to do things, that directly affect the well-being of their areas. In my view action to reduce the costs of goods or services purchased by the authority which does not have as its object the use of the money saved for an identified purpose which the authority considers will promote or improve well-being does not, on a natural reading of the words, fall within the section.

61. It is clear from the terms of Section 1 of the Localism Act that Parliament intended that the power of local authorities should be widened. The section makes no reference to outcome. It permits the exercise of the power "in any way whatever".

The Explanatory Notes to the 2011 Act emphasise the breadth of the power provided by Section 1 of the Act. They indicate that the power may be used to allow a local authority to do "things that are unlike anything that a local authority – or any other public body – has done before or may currently do."

62. This power is not unfettered. Section 2 of the Act establishes that it cannot be used to circumvent restrictions on a pre-existing power or to avoid an express statutory restriction. Thus, it does not give rise to a right to prosecute because Section 222(1) of the 1972 Act still applies: see *AB and others*. In addition, any exercise of the general power of competence will remain subject to judicial review on ordinary public law principles. Where activity by a local authority properly can be said to be irrational or *Wednesbury* unreasonable, it will be liable to be quashed. In the context of an investigation of the kind with which we are concerned, there might be circumstances in which there could be a finding of irrationality. It would not be helpful to suggest specific circumstances which could give rise to such a finding. That is not the basis of the Claimant's case in these proceedings.

63. All that said, whatever the limits of section 1 and subject to any separate, specific objection, there can be no doubt that a local authority has a general power of competence to conduct an investigation. On this footing, Lancashire's general power to conduct an investigation cannot realistically be challenged.

64. For completeness, we acknowledge that the use of the term "an individual" in the context of a local authority i.e. a corporate public authority is "legally puzzling" as it is put in the current edition of *De Smith's Judicial Review*. Many things an individual can do will be impossible for a local authority. Conversely, many of the functions of a local authority are conducted on a systemic basis with no individual being responsible for the entirety of the function concerned. It is, however, unnecessary to take time to resolve this puzzle.

65. The Claimants and the 2nd to 7th Interested Parties argue that CWAC's investigation could not have been conducted by an individual. We agree that the applications with which Judge Brown was concerned could not have been made by any individual. An application for a production order pursuant to the Proceeds of Crime Act 2002 can only be made by "an appropriate officer". In the context of a money laundering investigation, such an officer must be one of the following: a constable, an SFO officer, an accredited financial investigator, an officer of Revenue and Customs or an immigration officer. An officer of this description by definition will be "an individual" albeit one of a particular type. However, it does not begin to follow that the investigation could not have been conducted by an individual.

66. In our judgment, Section 1 amply entitles a local authority to engage in an investigation in relation to fraudulent trading practices prima facie falling within their function as a trading standards authority, albeit that the local authority's action in doing so could be subject to challenge on well-established public law principles.

67. In oral argument Mr Thomas accepted that an investigation by a local authority into criminal activity could be open to a rationality challenge. He emphasised that any challenge would not easily succeed. He cited what was said in *AB and others* in

relation to the court's power to review a decision to prosecute pursuant to Section 222(1) of the 1972 Act, namely:

"...it is clear from the cases to which we refer that the court has jurisdiction to review the Council's decision to prosecute. However, that is an exercise to be carried out sparingly and within the parameters of the very broad discretion granted to the Council under section 222 . There is, however, a high hurdle to be overcome before the court will interfere with a local authority's exercise of discretion under section 222."

He argued that the same approach should be taken to any challenge to a local authority's decision to investigate criminal activity. If anything, the hurdle will be higher given the general power of competence provided by Section 1 of the 2011 Act as compared with the criteria-based power set out in Section 222 of the 1972 Act. We agree with Mr Thomas. Any court must be very slow to interfere with a local authority's exercise of their general power. Furthermore, the power to investigate necessarily carries with it a broad ambit of discretion, even broader than the discretion to prosecute.

68. Mr Thomas suggested that the test as applied to the circumstances of this case could be expressed as follows: could the local authority reasonably have believed that the investigation being undertaken might lead to a prosecution pursuant to the discretion under Section 222(1) of the 1972 Act? Since the Claimants have not made a rationality challenge the basis of their case, it is not necessary for our decision to reach any firm conclusion on whether this is the appropriate test. An alternative test, where such a challenge is made, would be an objective variant, namely whether there was any realistic possibility that the investigation might lead to a prosecution within s.222(1). We make clear that, in an appropriate case, a rationality challenge to an investigation by a local authority could succeed on whichever test is appropriate. We shall not express a view as to which test should be applied since we have heard no argument on the topic. On the facts of this case, we have no doubt that CWAC would satisfy whichever of these tests is appropriate.

69. As we have explained, Lancashire's power to conduct the investigation cannot realistically be challenged. CWAC are conducting the investigation by reason of a delegation of the investigative function by Lancashire. Lancashire may not have referred specifically to Section 101 of the 1972 Act. That does not affect the legitimacy of the delegation so long as they were delegating a lawful function. As we have set out, the process of delegation was conducted via NTS. Contrary to the submissions made by the Claimants and the 2nd to 7th Interested Parties, the nature and extent of the alleged offending and the potential offences committed were identified in the reference by Lancashire to NTS. Although there was no specific reference to money laundering, it is inherent in allegations of corporate fraud that such offences are likely to have been committed. The delegation of the investigative function by Lancashire to CWAC was not rendered unlawful because Lancashire did not identify every potential allegation. What was delegated was the investigation of the allegedly fraudulent activity of various companies and individuals.

70. Mr Thomas relied on the protocol agreement of 2012 reached between each of the trading standards authorities in the North West as justifying the activity of CWAC. Mr Thomas sought to rely on the agreement of itself as rendering lawful delegation of investigative functions from any North West local authority to CWAC. We do not

agree that the protocol agreement provides CWAC with lawful authority. But the agreement is simply a mechanism whereby Section 101 of the 1972 Act operates in the context of trading standards investigations in the region. It is the operation of Section 101 which gives CWAC the authority to investigate.

71. Over and above Lancashire's and, hence, CWAC's, power to conduct the investigation under section 1 of the Localism Act 2011, we are persuaded that they enjoyed a like power pursuant to s.111 of the 1972 Act, i.e., to conduct an investigation of this kind as something "calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions". In this instance the relevant function is the commencement of criminal proceedings, necessarily and implicitly, a prosecution coming within s.222 of the 1972 Act. While, as already emphasised, at the investigation stage it is most unlikely to be known whether a prosecution will (as opposed to might) be "expedient" within the meaning of s.222, the conduct of an investigation with a view to deciding whether or not to prosecute is capable of satisfying the requirements of s.111 - provided only (as already outlined) that the local authority entertains a reasonable belief or there is a realistic possibility that the investigation might result in a prosecution coming within s.222. On this footing, the investigation can properly be seen as calculated to facilitate, or conducive or incidental to, the discharge by the local authority's function of commencing criminal proceedings. The conduct of an investigation is not an end in itself; it is designed to lead to a decision as to further action (prosecution or a decision not to prosecute). If there is a realistic possibility (to use one of the possible tests) that the investigation might result in a s.222 prosecution, then s.111 would be satisfied. Here, if need be, we are satisfied that this is the case.

72. We summarise the position as follows:

- CWAC are investigating the allegedly fraudulent activity of the Claimants and the 2nd to 7th Interested Parties pursuant to lawful delegation by Lancashire trading standards.
- An investigation of this kind is a delegated function CWAC are entitled to exercise whether pursuant to Section 1 of the Localism Act 2011 and/or Sections 111 and 101 of the 1972 Act.
- A local authority does not need to satisfy the expediency test in Section 222(1) of the 1972 Act and/or make a decision to prosecute before they lawfully can investigate alleged criminal activity.

It follows that we reject the primary submissions of the Claimants as supported by the 2nd to 7th Interested Parties.

73. Strictly, consideration of whether a prosecution of the Claimants would promote or protect the interests of the inhabitants of Lancashire and/or Blackpool is premature. However, we shall address the issue since, at the grant of permission, the court indicated that the issue of the impact of fraud by a trader on the inhabitants of the area from where the fraud was conducted ought to be considered. We emphasise that every case will depend upon its own facts and that a court should be slow to interfere with a local authority's exercise of discretion as to what will promote or protect the interests of their inhabitants. What is clear from the authorities we have reviewed is that a local authority properly can consider the impact on the area in terms of

reputational damage. Further, there will be adverse resource implications if a trader repeatedly engages in fraudulent practices from a local authority's area without any effort by the local authority to take enforcement action to prevent such trading. The trading standards officers employed by the local authority are likely to be diverted from other useful activity due to the need to monitor and to deal with complaints about the trader. This approach was approved in *AB and others*. There is a clear distinction to be drawn between the activity of Thurrock Council in setting up a free-standing investigation and prosecution service and Lancashire (via CWAC) pursuing allegations of fraud being practised within its area – a matter rooted locally even if its consequences are geographically more widespread.

A note of caution

74. As we have set out above, the power of any local authority to engage in investigation of criminal activity is not unfettered. The power of a local authority to engage in legal proceedings is defined by Section 222(1) of the 1972 Act. The fact that a Government Department funds NTS to fulfil objectives including national consumer enforcement work cannot provide any local authority with a power which it does not otherwise have. NTS is not a legal entity capable of commencing a prosecution. The Regional Investigation Teams to which NTS refers cases similarly have no legal entity for such purposes. It follows that any so-called national prosecution must be conducted by a local authority whether in the interests of its own inhabitants or the inhabitants of another local authority which has delegated its prosecutorial function. The creation of regional or national investigative teams cannot override the clear provisions of Section 222(1) of the 1972 Act. On the facts of the present case, however, for the reasons already given, the structures put in place to take effective regional action against alleged criminal activity do not result in the local authorities in question exceeding their statutory powers.

75. Mr Thomas relied on what is known as the Home Authority Principle to justify the investigation. As expressed in an eponymous document published by Lancashire a home authority will place special emphasis on the legality of trading activity originating within its area. That may be so. But this principle remains subject to the various statutory provisions to which we have referred. These are the basis of any local authority's powers.

76. Mr Daw and Mr Marshall relied on the delays in this case to support the argument that CWAC lacked the vires to conduct this investigation. They argued that the delays demonstrated that the investigation was beyond the powers of a local authority. This argument is without foundation. Either CWAC is empowered to investigate the Claimants and the 2nd to 7th Interested Parties or it is not. The fact – if fact it be – that the investigation is being conducted inefficiently or too slowly is irrelevant to the issue of vires.

77. The real investigation in this case commenced at the beginning of 2015. In 2016 warrants were executed which resulted in CWAC obtaining a very substantial body of digital material which required analysis. In 2017 there was an application before the Crown Court in relation to that material. The resulting decision was the subject of an application for judicial review in 2018. We were told in the course of the hearing that a charging decision is anticipated at some point before the end of 2019. We agree that

the progress of the case has hardly been speedy. Unfortunately, this is not a phenomenon peculiar to this case. Cases prosecuted by the Serious Fraud Division of the Crown Prosecution Service and by the Serious Fraud Office often are subject to the same delays. This is not something to be applauded; rather the reverse. But it demonstrates that the fact of delay in this case cannot provide any indication of whether CWAC have exceeded their powers.

78. Delay may be relevant at the point at which any prosecution is commenced. In the first instance that will be a matter for the court seized of the proceedings. We do not intend to rehearse the potential consequences of delay on those proceedings. They are outwith the issues which arise in this claim for judicial review. Equally, as we indicated in the course of the hearing, there is an obvious need for progress in the case – and we strongly urge CWAC to now urgently undertake such work as is necessary to bring this investigation to a conclusion, one way or another.

79. It was suggested in the course of the hearing that we should invite the Crown Prosecution Service or the Serious Fraud Office or the National Crime Agency to consider intervening in the proceedings much as occurred in *AB and others*. On reflection, we rejected that suggestion. It was made very much at the eleventh hour. It would have introduced yet further delay. In any event, we ultimately concluded that it was extremely unlikely that any of these agencies would have been able or willing to offer any useful assistance.

Conclusion

80. We dismiss the claim for judicial review of the decision of Judge Brown to grant production orders. Judge Brown granted the orders on the basis of relatively limited argument and material. We have heard much broader submissions and we have received evidence not available to Judge Brown. We are satisfied that the material we have seen and heard only goes to confirm that his decisions both as to the vires of the investigation underpinning the production orders and as to the merits of the applications for those orders were correct.