

Status:

**The Queen on the application of Matthew Francis Uberoi, Neel Akash Uberoi v
City of Westminster Magistrates' Court**

CO/9738/2008

High Court of Justice Queen's Bench Division Administrative Court

2 December 2008

[2008] EWHC 3191 (Admin)

2008 WL 5044304

Before: The President of the Queen's Bench Division (Lord Justice May) and Mr Justice Maddison

Tuesday 2 December 2008

Representation

Mr Patrick O'Connor QC (instructed by Corker Binning Solicitors London WC2R 3JJ) appeared on behalf of the Claimants.

Mr John Kelsey-Fry QC and Miss Sarah Clarke (instructed by the Financial Services Agency) appeared on behalf of the First Interested Party.

Mr Sam Grodzinski (instructed by the Treasury Solicitor) appeared on behalf of the Second Interested Party.

Judgment

Tuesday 2 December 2008

The President of the Queen's Bench Division:

1 The question which these proceedings for judicial review raises is whether, in instituting proceedings for an offence of insider dealing under [Part V of the Criminal Justice Act 1993](#) , the Financial Services Authority first need the consent of the Secretary of State or the Director of Public Prosecutions by virtue of [section 61\(2\)](#) of the 1993 Act. The answer turns on the construction of [section 402 of the Financial Services and Markets Act 2000](#) and whether that section should be construed in its statutory context as modifying [section 61\(2\)](#) of the 1993 Act.

2 In a ruling given on 19 September 2008 in the City of Westminster Magistrates' Court District Judge Purdy ruled that the Financial Services Authority were empowered to institute proceedings for offences under [Part V](#) of the 1993 Act without first obtaining the consent of the Secretary of State or the Director of Public Prosecutions. The claimants challenge that ruling. The Financial Services Authority say that the District Judge's ruling was correct. Her Majesty's Treasury, who appear by counsel with the court's permission, support the FSA.

3 The facts which gave rise to the ruling are not contentious. On 25 May 2008 the FSA laid informations against Neel and Matthew Uberoi upon 17 charges of insider dealing in shares contrary to 52(1) of the [Criminal Justice Act 1993](#) . They are respectively father (a semi-retired dentist) and son (a university student), both of good character. They were each summonsed to appear at the magistrates' court on the basis of these informations. The informations involve various share transactions made by Neel Uberoi between 30 May 2006 and 4 August 2006 in three companies. It is alleged that Matthew (his son) acquired relevant inside information while working in the summer as an intern with Hoare Govett, the corporate broking arm of ABN-AMRO Bank in the City of London, and that he communicated this information to his father before the relevant transactions.

4 Neither defendant contested the sufficiency of the evidence for committal purposes, but the defence challenged the legality of the summonses because the FSA had not, as they accepted, obtained a consent under [section 61\(2\)](#) of the 1993 Act.

5 The District Judge was asked to rule on a point of law expressed as follows:

“When instituting proceedings for an ‘insider dealing’ offence contrary to [Part V of the Criminal Justice Act 1993](#) , pursuant to its powers under [section 402 of the Financial Services and Markets Act 2000](#) , does the requirement for a consent to be obtained under [section 61\(2\) of the Criminal Justice Act 1993](#) apply to the FSA?”

It was agreed that, if consent is required, any prosecution without the necessary consent would be a nullity and any conviction would have to be quashed on appeal: see [R v Pearce 72 Cr App R 295](#) . It was also agreed that the wording of [section 61\(2\)](#) of the 1993 Act prohibits the institution of proceedings for insider dealing offences without consent. Proceedings are “instituted” upon the laying of an information and the issue of a summons: see [Price v Humphries \[1958\] 2 QB 353](#) and [R v Bull 99 Cr App R 193](#) . The present summonses would thus be a nullity if [section 61\(2\)](#) applies.

6 It is submitted on behalf of the claimants that a requirement for consent can fulfil a purpose to see that there is a proper degree of independent judgment of whether prosecution is in the public interest, having regard in this instance to such matters as the first claimant's health. I am not clear why it is said that the FSA are not properly able to take matters of public interest into account, but that is incidental to what in the end is a pure question of construction.

7 The statutory provisions at the heart of the issue are [section 52](#) of the 1993 Act, which defines the offence of insider dealing, and [section 61\(2\)](#) of the 1993 Act which provides:

“Proceedings for offences under this Part shall not be instituted in England and Wales except by or with the consent of —

- (a) the Secretary of State; or
- (b) the Director of Public Prosecutions.”

[Section 402](#) of the 2000 Act, which is headed “Power of the Authority to institute proceedings for certain other offences” provides:

“(1) Except in Scotland, the Authority may institute proceedings for an offence under —

- (a) [Part V of the Criminal Justice Act 1993](#) (insider dealing); or
 - (b) prescribed regulations relating to money laundering.
- (2) In exercising its powers to institute proceedings for any such offence, the Authority must comply with any conditions or restrictions imposed in writing by the Treasury.
- (3) Conditions or restrictions may be imposed under subsection (2) in relation to —
- (a) proceedings generally; or
 - (b) such proceedings, or categories of proceedings, as the Treasury may direct.”

[Section 402](#) has to be read with [section 401](#) which provides for proceedings for offences under the 2000 Act itself or subordinate legislation made under it. [Section 401\(2\)](#) provides:

“Proceedings for an offence may be instituted in England and Wales only —

- (a) by the Authority or the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions.”

The Authority in this statute is the FSA. Thus the FSA is empowered to bring proceedings for offences under the 2000 Act itself without obtaining the consent of the Secretary of State or the DPP.

8 The District Judge summarised the parties' submissions in some detail, which were substantially the same as those advanced before this court. He concluded that it was plain that the aim of Parliament was to place the FSA to the forefront in general regulation of fiscal markets, including, where necessary, criminal proceedings dealing with fiscal markets and their regulation. He found it impossible to accept that this was not intended to give the FSA the same unfettered powers in this area as those enjoyed by the Secretary of State, the DPP, and, he was persuaded, the Director of the Serious Fraud Office. The District Judge referred to the decision of the Divisional Court presided over by Maurice Kay LJ in *R(Seuriplan Plc, Phillip Ullmann, Sabrewatch Ltd, Luke Lucas v Security Industry Authority [2008] EWHC 1762 (Admin)* as a comparable case. He referred to short passages in textbooks. He was not persuaded by the position that if that was what Parliament intended, the language of [section 402](#) did not achieve it. He appears to have been persuaded to discern what Parliament intended in part by a plainly illegitimate reference to what Hansard records the Chief Secretary of the Treasury as saying in Parliament on 6 May 1998 as to what his intention then was for a Bill which had yet to be placed before Parliament.

9 Mr O'Connor QC is right to draw our attention to the opinion of Lord Nicholls of Birkenhead in [Queen v Secretary of State for the Environment, Transport and the Regions and Another, ex Parte Spath Holme Limited \[2001\] 2 AC 349](#) , 396F, where he said:

“Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the ‘Intention of Parliament’ is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and the words used may be impressively complete or woefully inadequate. Thus, when courts say that such-and-such a meaning ‘cannot be what Parliament intended’, they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in [Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG \[1975\] AC 591](#) , 613:

‘We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used’.”

10 Insider dealing was first made specifically unlawful by section 68 of the Companies Act 1980 . Section 72 of that Act provided for criminal penalties on conviction. Section 72(2) provided that proceedings for an offence under that section should not be instituted in England and Wales except by the Secretary of State or by, or with the consent of, the Director of Public Prosecutions. This was replicated in [section 8\(2\) of the Company Securities \(Insider Dealing\) Act 1985](#) . [Section 209 of the Companies Act 1989](#) amended the wording of [section 8\(2\)](#) of the 1985 Act to prohibit the institution of proceedings except “by, or with the consent of, the Secretary of State or the Director of Public Prosecutions”.

11 Meanwhile, the [Criminal Justice Act 1987](#) established the Serious Fraud Office, whose Director was given power by [section 1\(5\)](#) of that Act to institute and to have the conduct of any criminal proceedings which appeared to him to relate to serious or complex fraud. [Paragraph 4 of Schedule 1](#) to the 1987 Act expressly disappplied for the Director of the SFO any statutory

requirement to obtain the consent of the DPP or any other person. Mr Kelsey-Fry QC suggests that this enabled the Director of the SFO to institute proceedings for unlawful insider dealing without consent. That may perhaps be so if the insider dealing also constitutes complex and serious fraud, which it may or may not do. Mr Kelsey-Fry accepts that [Schedule 2](#) to the 1987 Act, which sets out consequential amendments, does not mention the 1985 Act. It seems to me to be distinctly questionable whether Mr Kelsey-Fry is entirely correct to stress, as he repeatedly does, that the people whom Parliament intended to institute specific proceedings without consent for the statutory offence of insider dealing included, from the inception of the 1987 Act, the Director of the Serious Fraud Office. Whether that is correct or not, it is evident that there may be circumstances of complex and serious fraud where the statute enables the Director of the SFO to bring such proceedings without consent.

12 The 1987 Act is in another sense unhelpful to the SFA case and correspondingly of some help to the claimants' case because [paragraph 4 of Schedule 1](#) is a closely-related statutory provision where Parliament thought it necessary to disapply a requirement for consent expressly for the Director of the SFO, but no equivalent express provision is to be found for the SFA in the 2000 Act.

13 To complete the statutory history, [section 61\(2\)](#) of the 1993 Act, which I have set out, is the current version of the power to institute proceedings for an offence of insider dealing, which requires consent.

14 Coming forward to [sections 401 and 402](#) of the 2000 Act, [section 401](#) empowers the FSA to institute proceedings without obtaining consent. [Section 402](#) empowers the FSA to "institute proceedings for an offence under [Part V of the Criminal Justice Act 1993](#) (insider dealing)" without addressing the fact that [Part V](#) itself contains [section 61\(2\)](#), which requires consent.

15 The claimants' case is that the power simply "to institute proceedings" cannot be impliedly construed as disapplying the express and unmodified requirement in the 1993 Act to obtain consent. Mr O'Connor on behalf of the claimants makes, in summary, the following points:

(1) The requirement for consent is a protective safeguard embedded in insider dealing legislation going back to 1980, which should not be removed without express language.

(2) [Section 402](#) of the 2000 Act does not attempt to modify [section 61\(2\)](#) of the 1993 Act. The meaning of [section 402](#) is clear.

(3) When Parliament intends to make such a modification, it does so expressly: see [paragraph 4 of Schedule 1](#) to the 1987 Act.

(4) The juxtaposition of [section 401 and 402](#) of the 2000 Act is striking. [Section 401](#) expressly addresses the question of consent for instituting proceedings for offences under the 2000 Act. The very next section says nothing about consent and yet is said to modify an existing statutory provision by implication only. [Section 401](#) provides for the new regime; [section 402](#) inserts an existing regime which has to be read in the light of its history.

(5) The words of [section 402](#) "proceedings for an offence under [Part V of the Criminal Justice Act 1993](#)" may be read as positively affirming the provisions of [Part V](#) of the 1993 Act, which include [section 61\(2\)](#).

(6) Dispensing with the need for consent would require very few words, but they are not there.

(7) Parliament plainly regarded it as necessary to give certain people express power to institute proceedings since all other official prosecutors were given such power, that is to say the Secretary of State, the DPP and perhaps the Director of the Serious Fraud Office.

(8) Requiring consent for the SFA to institute insider dealing prosecutions is not inconsistent with a general intention to put the FSA in the forefront of the general regulation of financial markets. There is no absurdity in the need to require consent. The FSA are subject to possible instruction from the Treasury under [section 402\(2\)](#) . They are not a specified prosecutor under [section 71\(4\) of the Serious Organised Crime and Police Act 2005](#) .

(9) The decision of another Division of this Court in *Securiplan* is not parallel because the issue there was whether the SFA had power to prosecute at all under the general powers of [section 1\(3\) of the Private Securities Industry Act 2001](#) . The question of consent did not arise.

16 Mr Kelsey-Fry submits that the FSA is a company limited by guarantee and as such is entitled, as a private person, to institute criminal proceedings for offences without the need to seek that power from statute. He submits that the purpose and effect of [section 402](#) of the 2000 Act must therefore be to achieve concurrent powers with the Secretary of State, the Director of Public Prosecutions and the Director of the Serious Fraud Office such that the SFA is added to the list of those by whom proceedings for an offence under [Part V](#) of the 1993 Act may be instituted. He submits that, reading all the legislation together, the effect of [section 61\(2\)](#) of the 1993 Act is now as follows:

“Proceedings for an offence under this Part shall not be instituted in England and Wales except —

(1) by the Secretary of State, or

(2) by the Director of Public Prosecutions, or

(3) by the Director of the Serious Fraud Office, or

(4) by the FSA, or

(5) with the consent of the Secretary of State or that of the Director of Public Prosecutions.”

17 There is, I think, a large degree of unreality in suggesting that the FSA should be viewed simply as a private person. The form of the submission I have just recounted as to the effect of [section 61\(2\)](#) , read with other legislation, has the air of creative statutory amendment which Parliament did not undertake. I have already expressed a degree of scepticism about including the Director of the Serious Fraud Office, without qualification, within the ambit of [section 61\(2\)](#) of the 1993 Act, although we were told that the Serious Fraud Office has undertaken insider dealing prosecutions.

18 More promising, however, is Mr Kelsey-Fry's submission as to the shape and structure of the 2000 Act and the role given to the FSA under it. The 2000 Act is a huge statute with 433 sections and 22 Schedules, occupying 488 pages of Halsbury's Statutes (not a great deal of which is editorial). On one view it is an example (regrettably not unique) of statutory overload. Quips about “War and Peace” come to mind. It is neither reasonable nor proportionate to attempt to understand it and to fit it all together in detail, but the main lines are reasonably clear: [Part I](#) establishes the FSA as the Regulator; [Part II](#) concerns Regulated and Prohibited Activities ([sections 23-25](#) provide for certain offences, including contravention of the general prohibition in [section 23](#)); [Part III](#) concerns Authorisation and Exemption; [Part IV](#) concerns the application for, and the giving of permission to carry on, Regulated Activities; [Part V](#) concerns the Performance of Regulated Activities; [Part VI](#) concerns Official Listing; [Part VII](#) concerns Control of Business Transfers, where control lies with the court (see [section 111](#)); [Part VIII](#) concerns Penalties for Market Abuse; [Part IX](#) concerns Hearings and Appeals before the Financial Service and Markets Tribunal; [Part X](#) concerns Rules and Guidance ([section 138](#) giving the FSA a general rule-making power); [Part XI](#) concerns Information Gathering and Investigations, beginning with [section 165](#) which gives the FSA power to require information; [Part XII](#) concerns Control over Authorised Persons; [Part XIII](#) gives the Financial Services Authority powers of Intervention for

incoming firms (it also gives power to the Office of Fair Trading); [Part XIV](#) concerns Disciplinary Measures, giving the FSA powers of public censure and the imposition of financial penalties; [Part XV](#) concerns the Financial Services Compensation Scheme ; [Part XVI](#) concerns the Ombudsman Scheme ; [Part XVII](#) concerns Collective Investment Schemes; [Part XVIII](#) concerns Recognised Investment Exchanges and Clearing Houses; [Part XIX](#) concerns Lloyd's; [Part XX](#) concerns the Provision of Financial Services by Members of the Professions; [Part XXI](#) concerns Mutual Societies; [Part XXII](#) concerns Auditors and Actuaries; [Part XXIII](#) concerns Public Record, Disclosure of Information and Co-operation; [Part XXIV](#) concerns Insolvency, among other things giving the SFA power to participate in a wide range of insolvency proceedings; [Part XXV](#) concerns Injunctions and Restitution (giving the FSA power to apply to the court for injunctions in the case of market abuse ([section 381](#)); for restitution orders [section 382](#) ; [section 384](#) gives the FSA power to require restitution); [Part XXVI](#) concerns Warning notices and Decision notices to be given by the FSA; [Part XXVII](#) concerns Offences; [Part XXVIII](#) is Miscellaneous; and [Part XXIX](#) concerns Interpretation.

19 In all this, the FSA is centrally concerned with most of it. The mere recitation of the headlines to the 29 Parts of this mammoth statute show that they are indeed the principal regulator of financial markets and activity. Although they are not concerned with absolutely everything, they are central to most of it. They have very wide powers short of instituting proceedings for offences. They have power to institute proceedings without consent for offences under the 2000 Act. If it were said that a regulator and rule-maker should require some supervision as a prosecutor, the answer is that the 2000 Act does not so provide for offences under the Act itself.

20 [Part XXVII](#) , which concerns offences, is the Part in which [sections 401 and 402](#) appear. There also appears [section 397](#) which in its first three subsections provides as follows:

“(1) This subsection applies to a person who —

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;

(b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or

(c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made) —

(a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or

(b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.

(3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.”

[Section 398\(1\)](#) under the heading “Misleading the Authority: residual cases” provides:

“A person who, in purported compliance with any requirement imposed by or under this

Act, knowingly or recklessly gives the Authority information which is false or misleading in a material particular is guilty of an offence.”

21 The FSA is empowered by [section 401\(2\)](#) to institute proceedings for these and other offences. These offences are not the same as, or identical to, insider dealing, but one can readily envisage circumstances in which both kinds of offence arose for consideration.

22 There are other particular indications in the statute to which Mr Kelsey-Fry draws attention. They include the fact that the 2000 Act transferred to the FSA the responsibilities of several other organisations and gave the FSA the function of taking action to prevent market abuse. [Section 1\(1\)](#) provides that the FSA is to have the functions conferred on it by or under the Act. [Section 2\(2\)](#) sets out the FSA's regulatory objectives. These include market confidence and the reduction of financial crime. By [section 3](#) the market confidence objective is to maintain confidence in the financial system operating in the United Kingdom; it includes financial markets and exchanges. By [section 6\(3\)](#) “financial crime” includes any offence involving fraud or dishonesty, misconduct in, or misuse of information relating to, a financial market, or handling the proceeds of crime. Mr Kelsey-Fry submits that this shows that instituting proceedings for offences of insider dealing falls squarely within the FSA's objects and regulatory objects. This is so, he says, independently of the existence of [section 402](#) .

23 [Part VIII](#) of the 2000 Act, which deals with market abuse, defines it in [section 118](#) as including (a) the misuse of information not available to the market, and (b) creating a false or misleading impression as to the market. Under [section 119](#) the FSA must issue a code designed to give guidance as to whether behaviour amounts to market abuse. [Section 123](#) empowers the FSA to impose fines on those engaged in market abuse. [Section 168](#) empowers the FSA or the Secretary of State to appoint persons to conduct investigations on its behalf in circumstances suggesting that an offence under [section 397](#) or under [Part V of the Criminal Justice Act 1993](#) may have been committed. [Section 168\(2\)](#) appears to bundle offences under the 2000 Act together with those under [Part V](#) of the 1993 Act. [Section 130](#) provides for the Treasury to issue guidance for the purpose of helping relevant authorities to determine the action to be taken in cases where behaviour occurs which is behaviour with respect to which the power in [section 123](#) appears to be exercisable and which appears to involve the commission of an offence under [section 397](#) or [Part V of the Criminal Justice Act 1993](#) , again putting those two together. [Section 130\(3\)\(a\)](#) provides that the “relevant authorities” are the Secretary of State, the FSA, the Director of the Serious Fraud Office and the Director of Public Prosecutions.

24 Mr Kelsey-Fry submits that, bearing in mind the regulatory objectives; the FSA's powers under the market abuse regime encompassing conduct capable of amounting to an offence under [section 397](#) and conduct amounting to insider dealing; the FSA's role in deciding between the civil and criminal regime for [section 397](#) and insider dealing; the FSA's duty to give guidance as to acceptable conduct in both cases; and the FSA's power to appoint investigators in respect of both offences, it is to be expected, in the light of all that, that the regulator (the FSA) should have identical prosecutorial powers in respect of both offences.

25 In my judgment, taken as a whole and in the light of the 2000 Act as a whole, that is a powerful submission. It is submitted that that is clearly the effect of [sections 401 and 402](#) . [Section 401](#) gives the FSA effective control over prosecutions for the new offences created by the 2000 Act, and [section 402](#) gives the FSA concurrent powers with the Secretary of State, the DPP and the Director of the SFO in respect of insider dealing. It is suggested that misuse of information and insider dealing is as much a part of the regulator's concern as behaviour amounting to an offence under [section 397](#) of the 2000 Act. Mr Kelsey-Fry points out that the obligation to comply with conditions or restrictions imposed by the Treasury in [section 401\(5\) and \(6\)](#) is replicated exactly in [section 402\(2\) and \(3\)](#) of the 2000 Act. He submits that the purpose of [section 402\(1\)\(a\)](#) cannot be simply to give the FSA a mere power to institute proceedings under [Part V](#) of the 1993 Act, which technically it does not need. It must be to complement [section 401\(2\)](#) and to place the FSA for the purpose of [Part V](#) of the 1993 Act in the equivalent position of the Secretary of State and the DPP.

26 On the wording of [section 402](#) , Mr Kelsey-Fry submitted that “instituting proceedings” there means laying the information required; that that cannot lawfully be done if consent is required and there has been no consent; and that therefore [section 402](#) gives power to institute

proceedings (which must be intended to be without consent), otherwise the provision that the FSA should be able to institute proceedings would not be achieved. He says that this makes the FSA one of those who may themselves institute proceedings.

27 As a narrow argument of construction, I do not find this persuasive. As [section 61\(2\)](#) of the 1993 Act makes clear by the use of the word “institute”, instituting proceedings and obtaining any consent necessary to do so are different things. Nevertheless, as will be apparent, I consider that that narrow construction in the end does not succeed.

28 Finally, Mr Kelsey-Fry pointed out that the maximum penalty for an offence under [Part V](#) of the 1993 Act and under [section 397](#) of the 2000 Act is the same, that is to say seven years' imprisonment.

29 In my judgment the structure and content of the 2000 Act amply demonstrate that it must have been the Parliamentary intention that the FSA would be able to institute proceedings under [Part V](#) of the 1993 Act without consent from outside. In the light of [section 61\(2\)](#) of the 1993 Act, and not overlooking [paragraph 4 of Schedule 1](#) to the 1987 Act and the absence of such provision in the 2000 Act, [section 402\(1\)](#) is not tightly drawn. But the implication is to my mind abundantly plain. It is achieved by reading the words “may institute” in [section 402\(1\)](#) as having the same meaning and effect as the same words in the passive voice “may be instituted by” in [section 401\(2\)](#), so that the FSA may institute proceedings under [section 402\(1\)](#) on their own initiative and without the antecedent need to obtain the consent of the Secretary of State or the DPP. If a narrow argument of literal construction might not lead to that result, in my judgment the narrow argument is overwhelmed by the obvious general Parliamentary intention and the specific intention to be derived from those two sections.

30 For these reasons I would dismiss this application for judicial review.

Mr Justice Maddison:

31 I agree. Speaking for myself, I can see force in the argument that, construed literally, [section 402](#) of the 2000 Act, when read together with [section 401](#), has not removed the requirement under [section 61\(2\)](#) of the 1993 Act for the consent of the Secretary of State or the Director of Public Prosecutions to the institution of proceedings for offences under [Part V](#) of that Act. However, in my judgment it is appropriate not to confine one's attention to [sections 402 and 401](#) alone, but to consider the structure, the content and the apparent purpose of the 2000 Act taken as a whole.

32 Viewed in that light, for the reasons given by my Lord, the President of the Queen's Bench Division, a conclusion that the requirement for consent under [section 61\(2\)](#) of the 1993 Act remains in place would, in my judgment, lead to such anomalies and inconsistencies that it must have been Parliament's intention in passing the 2000 Act taken as a whole to remove the requirement for consent to which I have referred.

33 **THE PRESIDENT OF THE QUEEN'S BENCH DIVISION:** We are very grateful for all this work and help that we have received. Thank you.

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