

Philip Coppel QC (for Veolia):

Yesterday your Lordships said that the documents might help Mr Downen to understand the schedules. These run to hundreds of pages. What I say is that we ask ourselves what a local government objector to an audit is doing in relation to section 5.1.e. [a requirement for the auditor to consider economy and efficiency issues across a council] and we say this sort of material really doesn't assist the process, bearing in mind his task is to put questions to an independent auditor, not to the council itself.

I raised yesterday in relation to the third issue, the question of whether section 15.1 [the right of an 'interested person' to inspect and copy the council's accounts to be audited, and all books, deeds, vouchers, receipts, bills and contracts relating to the accounts] lacks a sufficient intention to displace the law on commercial confidentiality.

If that is not accepted, then we say it is merely displaced to enable Mr Downen to exercise his section 15 rights. He can't use it [the information] for any other purpose.

I said yesterday that a local authority can acquire information through compulsion, and that is relevant when you come to look at what Lord Justice Rix alluded to in section 49 of the Act dealing with confidentiality of information held by the auditor and the Audit Commission.

This section imposes a restriction on the auditor and the commission and information is subject to non-disclosure subject to certain careful exemptions. Then section 43 imposes a criminal penalty for non-compliance. There is a recognition that the commission is not to do anything with the information that is not permitted. What we say here is that section 49 is emptied of the protection it provides, if any interested person is [nevertheless] able to get access to the same confidential information through section 15.1.

The reassurance which section 49 gives to those who supply information to the Audit Commission or the auditor, in confidence, does not survive unless section 15.1 is read down to protect the confidentiality of the information so supplied.

[Rix LJ: Let us get to grips with this. The way section 49 works is that no information obtained by the auditor or the Audit Commission shall be

disclosed except with the consent of the body to whom the information relates or for the purpose of any function of the commission, and then there are other special exceptions. It is not worded in terms of confidential information. It is any information which can't be disclosed, except with consent or under any function of the commission].

What it gives those supplying the information is a reassurance that it will only be used for specific purposes. It encourages people to be forthcoming and this serves the greater good. We say that that [assurance] is emptied if information which is confidential is able to be disclosed under section 15.1. My learned friends have no explanation for the obvious anomaly between sections 15 and 49. They are unable to point to a single policy justification to explain the obvious contradiction between the two provisions.

We say that the presence of section 49 and the long established right in common law to confidentiality of information begs the question that, given the lack of information about confidential information in section 15, the two provisions need to be read together.

[Rix LJ: This is not a very modern statute where these considerations are concerned. We know that personal information is protected in section 15, but there is nothing in the Act relating to how the auditor or the commission must deal with personal information. There is nothing at all in the statute which deals with confidential information].

We say that section 15.1 should be read down on the basis there is no specific reference in it that it is intended to displace commercial confidentiality or legal professional privilege.

[Etherton LJ: You need to supply some words. What words are you going to read in?]

That section 15.1 does not apply to commercial confidential information, to trade secrets or information subject to legal professional privilege. We say, absent to that, the statute is not designed to destroy the commercial confidentiality of information, and the court should read the section down with the exception I have described. That would be enough to dispose of this appeal.

The Audit Commission has recognised that disclosure of the information [sought by Mr

Downen] would destroy the confidentiality and it is not in question that Veolia would not be compensated for that loss.

The local government elector's role is to raise matters which are helpful to the auditor, because he [the elector] may notice something that the auditor has not seen. But the question is how far does that right need to go when you have a fully qualified and independent auditor who is able to carry out the task of auditing the accounts? If the auditor does not agree with the elector then he can go to court, but the elector is not there to gainsay the auditor or to call into question what he has done in terms of his duties.

[Rix LJ: It is a sort of gadfly role.]

My learned friends do not say what purpose would be served by extending it [section 15.1 inspection rights] to confidential information. The [county] council says that the destruction of confidentiality is necessary in a democratic society, for the rights and interests of others. We say that argument is only made out because the fact that it may be expedient is not a justification in itself.

The elector's right is not a right to stand in the auditor's shoes himself, but to assist the auditor.

[Coppel QC referred the court to a 2004 European Directive dealing with rules relating to tendering for contracts and the use of confidential information. He further submitted that confidential commercial information could be treated as private information under Article 8 of the European Convention on Human Rights, and also under Article 1 Protocol 1 of the convention, on the basis that confidential information could be treated as a 'possession' in European law.]

[Etherington LJ: Are you suggesting that any information which is capable of being protected by the courts through an injunction is capable of being treated as a possession, or are you saying what matters is that the information has a value?]

It is information that is to be treated as a possession and if it is a possession then it can be protected by the courts. It is information [to be protected] rather than that it is information that is a document. While information is not property, Article 1 Protocol 1 speaks of a possession in the ordinary meaning of

the word and the medium in which it is recorded is neither here nor there.

Mr Peter Oldham (for the Audit Commission):

What is audited is the accounts [of a public body] and not its statement of accounts. The Audit Commission Act and the regulations deliberately distinguish between the two. The requirement is for all accounts to be made up each year to 31 March, and shall be audited in accordance with the Act.

The nub of this is what is meant by the term 'audit'. If it is a selective exercise then it is right to talk about auditing all of the accounts. In his decision, Mr Justice Cranston talked at some length about the legislative history of section 15 [rights of an interested person to inspect and copy the accounts] and your Lordships will recall the Judge thought that it was persuasive that Parliament has twice looked at this legislation and has not thought to provide any other limitations expressly or in any event. Section 16 enables an elector to object to any matter in respect of the audit and one would expect the elector to have had sufficient information to be able to make an objection that an item of expenditure is contrary to law.

[Rix LJ: An elector is the only person entitled to make an objection. You cannot make an objection as an interested person. It is impossible for an elector to make an objection without access to a wide body of material. If an auditor wishes to assist an elector or a person interested to get into the accounts, what would really assist him would be to look at the statement of accounts. The statement of accounts gives a bird's eye view of the accounts but it is not available for inspection until the audit has been completed. The auditor is not dealing with actual documents, and the interested person is there as an outsider. This statute is full of mysteries.]

Your Lordship says there are certain mysteries in the Act. We don't say whether it is better [for the interested person] to see the statement of accounts. Parliament has given the person interested a wider range of rights to inspect accounts. Our main contention is that the accounts and the statement of accounts are different, and the right is in respect of the accounts. The right is to books [etc.] which bear on any movement to the accounts and we suggest this construction of the accounts gives proper and consistent meaning to the term in a way which my learned friend Mr Coppel's submission does not.

It greatly concerns us that my learned friend's contentions would change the nature of the role of the Audit Commission and auditors. Auditors would audit only the high level summary and would no longer audit the wider accounts which we have understood them to be for decades. We would no longer have jurisdiction to satisfy ourselves that 'accounts' in the sense understood by all parties except Veolia have been audited under the Act.

Auditors would not start the audit until the statement of accounts had been prepared and approved by the public body, because prior to that point the accounts under Mr Coppel's definition would not exist. The auditors would have no jurisdiction to issue an immediate Public Interest Report or apply to the court for a declaration that an item was contrary to law, until the statement of accounts had been prepared by the council at the end of the particular financial year.

We are concerned about the inconsistencies and absurdities referred to by Mr Justice Cranston where the right to inspect a document would only arise if the statement of accounts mentioned it by name or a contract was referred to in a line. Given that a large contract would be more likely to be included in the statement of accounts, the rights of inspection would arise, but a smaller contract would be hidden from view purely on the basis of value. That contention appears to defy credibility.

It creates an unprincipled and fortuitous situation. Omissions from the accounts would be outside of the scope of section 15 and omissions might arise through fraud, just when one might have thought that section 15 would be biting hard.

Turning to the issue raised by my learned friend concerning disclosure and confidential information, and whether the material can be used for another purpose, there is the HTV case [R.v. Bristol City Council ex parte HTV (2004)] where the judge [Elias LJ] came to the view that once information was disclosed then it was disclosed for all purposes.

Given our remit, we accept and feel tentative – given that there is a lack of facts in this case [in that] we have only seen the first set of confidential information on a redacted basis – that given our remit to support cost effective local government, we feel a result permitting untainted use of confidential information is not going to support

cost effective local government. The reason is that, if the information becomes generally available, it might affect the value that a local authority got from a particular contractor. My learned friend [Mr Coppel] says the information [Veolia] seek to protect is commercially valuable. In other words, if it were to be released generally then clearly that could have a damaging effect on the prices available for that type of service.

[Rix LJ: You mean a private contractor might decline to deal with a public body or might put its prices up?]

Not unless there was something that kept the price down. One might not know what would happen if the information got into the public domain. If the court were to say that the requirement is that the information should only be used for the purposes of the 1998 Act, then I don't think that would pose a problem.

[Rix LJ: I am not sure how you would read it in. Mr Coppel's suggestion in relation to confidential information is based on common law considerations.]

[Etherton LJ: Is it what the court would protect with an injunction? Suppose there is confidential information but the ratepayer or person interested has got wind of some terrible fraud that is going on. It is wrapped up with documentation that the contracting party has sought to hide by describing it as confidential. That would fall into your purview but it would not allow disclosure. How do you deal with that?]

Oldham: The auditor himself can disclose it to the person interested and we would expect most of these considerations to be solved that way. We see nothing that would prevent the person interested from taking it to the auditor, who would make use of the information to report any iniquity.

[Rix LJ: One can see some logic in that. But the difficulty is that if you have information falling into section 15 [and into the hands of an elector], then everything breaks loose. It is difficult to reconcile that with the fact that there are limitations on what the auditor may do [with information]. You resolve it by saying the person interested can use confidential information for the purposes of the statute – to be a gadfly to the auditor to that extent

– but it is then up to the auditor to decide how public it becomes.]

[Etherington LJ: I am looking at the issue of access to the material. Can you preclude a taxpayer from access under section 15.1 by virtue of this procedure?]

[Rix LJ: Mr Coppel wishes all confidential information to be redacted and his fallback position is that the person interested can only use it for the purposes of the statute. The auditor may have to consider his obligation to make the fraud known to all persons interested.]

It seems to us that that approach is entirely consistent with other provisions of the Act operate.

We do accept that the terms of a contract may be important in determining what is confidential, but we say that actual contractual terms may not be deemed to be confidential information. It might have been designated as confidential at the tendering stage but not in the contract.

[Mr Oldham referred to the 2004 Directive and submitted it concerned confidentiality arising during the tendering process and not subsequently.]

Clive Lewis QC (for Notts CC):

The [county] council recognises that Veolia has legitimate concerns about some of the information and the council recognises that Mr Downen has concerns to exercise what he contends are his statutory rights. The council is ‘piggy in the middle’. Our concern is that in making or declining to make available the information sought, that we are acting in accordance with the Act.

Either Mr Downen has the right to inspect or he does not and this court must take a view. It is for the court to tell us if we are correct as to Parliament’s desire to allow inspection, versus the impact on the individual company if that happens. We have to do that because the information sought is in our offices and we would let him look at it, but it is for this court to determine if there is any breach of Veolia’s rights if inspection is allowed.

In our submission the accounts are the ledgers in which items of income and expenditure and assets and liabilities recorded. The phrase ‘relating to’ means that there is a factual connection between

the documents listed and the accounts to be audited and inspected.

The accounts mean all the accounts of the local authority and Parliament says a local government elector may inspect the accounts to be audited as well as the statement of accounts.

There have been payments to Veolia and if we are right and those payments are part of the accounts then it is obvious that they relate to the accounts to be audited.

If it is not as plain as a pike staff that where we have an invoice which has the words Veolia on its heading, and that is not part of the accounts then we can always look for other information concerning payments to Veolia.

There is a statement of accounts which we could call evidence, which has explanatory forwards and things described as notes, and it is perfectly clear that whether it is called the accounts or the statement of accounts that if your Lordships turn to page 48 of that document it is clear that there is a waste contract entered into on 26 June 2006, between the council and Veolia, and we have paid £21.2 million in 2008/09.

If the council is correct and the accounts to be audited include these payments then do we understand Veolia to be suggesting that there were no payments? Their argument is about what do we mean by certain words and they are not really denying they are in a contract with the council, and the payments are in the council’s books for the financial year in question. If we are correct, these payments are part of the accounts, then we are home and dry.

If what the appellant is saying is that we don’t know that payments are in the ledger then in the [court] bundle we have a statement from [a manager] of Veolia that says that there have been payments.

Veolia know that they have been paid. It would not be right, as far as Mr Downen or any other interested person is concerned, for Veolia to hide behind that. Veolia don’t know what is in our ledgers but we do. We ask the court to make a judgement on that in case this matter goes anywhere else.

The 1998 Act is clear that there is no restriction save for that exemption introduced by Parliament so in terms of access we say there is no need to engage in a reading down of the provision.

There is a question if we do have access to information, confidential or not, what does Parliament intend the local government elector to have the access for?

This is not a matter for the council, but it is a matter between Mr Downen and Veolia. There are two interpretations. The first is that it gives a right of access under the Act, so that all information whether confidential or not is obtained for the purpose of the Act, just as you get disclosure in court cases.

The other interpretation is that once you have got the information then you are free to do what you want. You can sell it, you can give it to a journalist, and you can show it to any other person.

Parliament has not specified the interpretation. You can say that it is implicit that the information is to be used for the purposes of the Act. There is the question of how it is to be decided that information is confidential. How does the council know? How do the Mr Downens of the world work it out?

If it is to be for the purposes of the Act and that is all, then all the information obtained must be for the purposes of the Act and nothing more.

[Mr Lewis referred to Article 1 Protocol 1 of the European Convention and Mr Coppel's submission that information could be treated as a possession.]

If it was a deprivation then you would expect a compensation scheme and Parliament would say an interested person may have access to the accounts but there should be compensation available. The starting point for this court is to interpret section 15 as a right of inspection with no restriction on the use of such material, and where it is for the use of exercising audit rights. When you have identified what the statute means, you then measure that against Article 8 and Article 1 Protocol 1 and see if the provision is compatible. Only if it is not compatible do you need to identify further restrictions which need to be read into the provision.

We say that inspection is for a legitimate purpose and if it is more limited then we just use it for the audit purposes. But it is clear that the intention of Parliament was to ensure proper democratic accountability for public funds.

It is public money and the local government electors need to be sure that it is being spent wisely, especially at the present time.

Veolia knew about the inspections under section 15. They knew or should have known there is emphasis on value for money and that interested persons may exercise their rights under section 15. We say that Veolia did not at any point, before the inspection period, or in the claim made before Mr Justice Cranston, suggest that inspection would interfere with their Article 8 rights. They can't say that they didn't know about it.

This is shown by a statement supplied by [a manager] of Veolia which stated, as part of the application for leave to appeal, that as a result of Mr Justice Cranston's judgement that Mr Downen had been allowed to take a copy of one of the documents. Veolia is not asking for this document to be treated as a special case.

There is a peculiar paragraph in the statement, that the information was supplied to the defendant [council] to enable the defendant to make decisions about the evolution of the contract, and that details of Veolia's financial model [which Veolia did not wish to see passed into the hands of competitors] had been included in the contract because 'that would seem to be the best place for it as if it were a dog which needs to be kept in a kennel'.

Veolia seem to be saying that we have something here which needs to be kept safe and here is a nice box to put it in, and in it goes, and we turn the key and lock the box. Now if that is how Veolia does business then that is a matter for Veolia.

[The manager] has told us that this is information which is so sensitive that it has to be kept in a box marked 'contract'. We would welcome any guidance from the court as to whether the [public] inspection of these schedules would involve a breach of Article 8, and whether the information may be used for any purpose or for the purpose of the Act. Its use would then be a matter between Mr Downen and Veolia.

[Lewis QC submitted that Veolia had accepted in the Judicial Review hearing before Mr Justice Cranston that the European Directive of 2004 relating to the awarding of contracts did not apply to the contract or invoices sought by Mr Downen. Article 6 of the Directive referred to confidentiality of information forwarded to a public body by a commercial operator in relation to tendering. It did not apply to the contract which was a document drawn up between the council and Veolia.]

On their [Veolia's] case, they say that for 25 years that all of these invoices are subject to this restriction, and that cannot be right. It [the Directive] cannot stop the public from knowing. That cannot be what Article 6 [of the Directive] is about. If a contractor chooses to include information in a contract then Article 6 does not apply.

[Lewis QC referred the court to clauses in the contract which stated that terms of the contract could be disclosed under to statute, and clauses requiring commercially sensitive information to be kept confidential.]

We have to start by working out what is confidential. What information did Veolia designate? By any normal reading of section 15 there is access to information even if it is sensitive.

[Rix LJ: It says the parties shall keep information confidential but it goes on to say that if the council is required to disclose it, there is a 'let out'. Until that happens it is designated as confidential.]

That would include any disclosure for the examination of the authority's accounts. There is no evidence the invoices are subject to any duty of confidentiality at all. Section 15 [encompasses] all items of expenditure including contracts and invoices relating to the accounts. Confidentiality does not prevent access. It may or may not impose a restriction on use [of the information]. There would have to be a breach of European Union law and the European Convention on Human Rights.

Timothy Pitt-Payne QC (for Mr Downen):

Whatever definition is applied to the meaning of the 'accounts to be audited', it includes a record of all the local authority's receipts and payments. All of the accounts are to be audited. The statement of accounts may be part of the accounts to be audited.

That is sufficient to establish Mr Downen's rights to access some of the material. I invite the court to reject my learned friend's [Mr Coppel's] interpretation [of the 'accounts to be audited' as the statement of accounts and nothing more] as a blunt instrument to frustrate the statute. It would encompass material that was not confidential, but at the same time confidential documents referred to in the statement of accounts might be disclosed.

Mr Coppel's approach confines the elector to raising issues about the figures. What if the council gets a good deal this year, but at a very very bad rate in future years? To take an extreme example, if it was £2 per tonne this year but £1000 per tonne in future years? That is a bad bargain. That issue could properly be raised by the auditor. It could not be raised by the elector under Mr Coppel's analysis.

Mr Coppel [invited the court to apply a restriction to section 15 rights of inspection to exclude commercially confidential information, trade secrets and information supplied under legal professional privilege]. That would take that information outside of the scope of the legislation.

What he is inviting the court to do by reference to common law is to write an exemption into the statute. That goes well beyond the principle in *Morgan* and this is not a course that this court should embark upon. It would seriously frustrate the purpose of section 15 and interfere with the local elector's rights.

The other issue is a limitation on the use of the information, and what has been suggested is that it is implicit in section 15.1, ordinary common law principles, that once information has been disclosed that it can be used for the purpose of the exercise of rights of audit and no other purpose.

The same argument was put forward in the HTV case and was rejected. The difficulties in trying to make that approach work are such that this court should not go down that route and apply such a limitation. If such a limitation is to be done then it should be a matter for Parliament.

[Mr Pitt Payne referred to the judgement of Elias J in HTV which concerned a television company's attempts to access Bristol City Council's accounts as part of a documentary about a private landlord dealing with the council.]

There is no express limitation as to the use of the information. If there is a restriction about the purpose or intention about how the information can be used, then that would suggest that the local authority can ask questions about the interested person's purpose before the information is disclosed.

That would have a chilling or limiting effect on the exercise. If an elector can only properly use the information for certain purposes, does it not follow that the local authority should enquire about the purpose for which it is intended to be used?

What is also said by Elias J is that there are difficulties, in practical terms, in distinguishing the boundary between legitimate and illegitimate purposes. I suggest there are three problems with that approach. The first is the position of the person who is an interested person but is not an elector.

The right of access to the accounts under section 15.1 is a person interested, but rights to question the auditor and to object to an item in the accounts is accorded to an elector.

[In the HTV case, the company was classed as 'interested person' because it contributed to the authority's finances through non-domestic business rates and therefore qualified under section 15.1.]

We are left with a category of interested person allowed to get the information, but if Mr Coppel is correct they cannot make any use of it at all. There are no rights to question the auditor. The statutory right would be wholly fruitless. He can have the information but he is not allowed to do anything with it. It cannot be right to interpret that statute in this way, that you have a statutory right of access but are prohibited from acting on it.

Elias J suggests a person would be able to mount a legal challenge. What if they went to the Press with the information so there would be a story about the authority's accounts? That is the first problem if you apply a limitation on the person interested who is not an elector. What can the elector do? What if he wishes to show the information to a friend who has some expertise, in order to formulate some questions to the auditor? Is that a proper or an improper act?

What if he wants to tap on the expertise from further afield and he puts it on the internet and

invites comments from anyone with relevant experience? Is that proper or improper? It is difficult to distinguish from the first instance.

What if the local government elector has a friend in another authority and wishes to show the information to that friend who can think about whether similar enquiries or questions could be raised? In other words, using the information for benchmarking purposes. Perhaps someone in Nottinghamshire can deal with someone in Leicestershire to find out why Leicestershire gets a better deal. Is that legitimate or illegitimate?

Let's say the local government elector has information and wishes the Press to cover the issue, and shows the information to a journalist so that the journalist can write about the issue. Is that proper or improper? It is not a disclosure for the purposes of the statute. We are left with a dilemma. Either that disclosure is legitimate, in which case it blows a huge hole in Mr Coppel's submission, or it is illegitimate which means that the Press is not able to cover the issue. That is difficult.

[Rix LJ: I see all of that but one has to ask oneself why an elector or interested person would be free to use the information for any purpose at all, when the auditor has wide powers and is qualified and is independent, and is himself limited [by a duty of confidentiality] in section 49.]

There is a specific confidentiality provision in section 49 which concerns disclosure by the auditor except for certain purposes and that is not surprising since the Audit Commission is a creature of statute. It is not surprising that they are not to use information except according to their statutory functions. It is also a material point that the auditor and the Audit Commission have access to a wider body of information and for a longer period.

[Jackson LJ: It may be that the answers [to the scenarios posed] is no, no, no and no, and that the elector is not the primary mechanism for ensuring good governance. This is an additional right given to electors.]

Electors have a financial interest and the Act encourages the public to scrutinise the accounts. If there is a contract with the council then the electors are paying for it and they have the advantage over the auditor of local knowledge.

[Jackson LJ: But electors do not make a valuable contribution.]

It might be fairly technical information [they have inspected and copied] and they may wish to consult with others. What this case illustrates is that there are issues of importance to the public and there are public-spirited individuals who are prepared to give up their time [on these issues].

[Jackson LJ: They may well have professional expertise, but the fact that they want to put the information on the internet is a different matter.]

The fact is that Parliament has not chosen to do anything to limit the elector's rights, but Mr Coppel is asking this court to do just that. If one is [attempting to do that by] applying ordinary common law principles then that is a matter best left to Parliament, and not to judicial legislation.

On the existing state of the law, the requestor can use the information for any lawful purpose, rather than an unlawful purpose. There may be questions about copyright where someone can establish that a PFI contract would fall into the law of copyright. My point is that [misuse] would be unlawful because it is a breach of copyright and not because it is necessary to restrict an elector's rights.

As far as the human rights issue is concerned, I accept that it might be engaged but what I don't accept is that the terms of the contract, to which the public authority is party, are matters which are engaged under Article 8. Once one has a contract with a public body, then it will engage the public body in financial responsibilities.

[Etherton LJ: If you have a contract where both parties agree that certain information is to be confidential, but a statute says that it must be disclosed, why does that not engage Article 8?]

It is a small leap to say that Article 8 could extend to commercial confidentiality, but if you then say that you must extend it to the actual terms by which a public body binds itself to certain obligations, then that is a major leap. The public interest exercise is immediately enjoined.

[Etherton LJ: What we are concerned with is whether information is capable of being a possession.]

One needs to approach Article 1 Protocol 1 on the existing authorities. It is one thing to apply that to confidential information but it is something else to extend it to a contract with a public authority.

[Etherton LJ: But a contract grants rights.]

What is the information that Veolia is seeking to protect as a possession under Article 1 Protocol 1? It is seeking to protect some parts of the contract and the contract is with a public authority.

[Rix LJ: The only purpose of mentioning that it is a public authority is to say that there is a public interest to be balanced. I don't understand why you are saying it must be extended beyond a balancing exercise. What you are suggesting is that if you have a possession, and it is contained in a contract with a non-public body then you are OK. But if your possession is muddled up with a public body which is itself subject to the Convention, you are outside of that protection?]

What we are talking about is a possession which is a contract with a public authority and I say that that should not be extended into Article 1 Protocol 1.

Philip Coppel QC (replying for Veolia)

Veolia has expressed great concern about the effect of any disclosure of its commercially confidential information, from day one. If you allow confidential information to be disclosed for 20 days or 20 hours then it is no longer confidential. The problem with applying a restriction is: How do you enforce it?

Mr Lewis suggests that the council remains agnostic about the use to which Mr Downen may use the information, but that is wrong because it is necessary for there to be a public interest balancing exercise. If your Lordships say that the council is obliged to carry out a balancing exercise [regarding] information which is confidential then what needs to happen is that the council must enquire of Mr Downen to see why it is important [that it should] be inspected and preferably it should consult Veolia. The public authority must act in accordance with Article 8.

[Rix LJ: We will be reserving judgement.]

[End of submissions].