Neutral Citation Number: [2018] EWHC 378 (Admin)

Case No: CO/1951/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday 6 March 2018

Before:

MRS JUSTICE MAY DBE

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Between:

Stody Estate Limited	**Claimant**
Secretary of State for Environment, Food and Rural Affairs	**Defendant**
- and –	
National Farmers' Union	Intervener

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Hugh Mercer QC and Jessica Wells (instructed by **Hewitsons LLP**) for the **Claimant**
George Peretz QC (instructed by **Government Legal Department**) for the **Defendant**
John Robb (instructed by the National Farmers' Union) for the **Intervener**
Hearing dates: 19 December 2017

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Judgment Approved

Mrs Justice May:

Introduction

1. The EU operates a system of payments to farmers in member states: the single farm payment scheme ("SPS"). The SPS is a direct support scheme for farmers under the EU's common agricultural policy. It is voluntary: farmers may apply for payments under the scheme and will be granted them if they satisfy certain eligibility criteria. Until 2003 the system was broadly one of payments in return for production; after 2003 it changed to one of incentivising conservation: payments were directed to the preservation of the environment, wildlife and habitats. In the UK, the SPS is administered by the Rural Payments Agency ("RPA").

2. As is set out in more detail below, farmers seeking a payment under the SPS are obliged to comply with various requirements, called "cross compliance" requirements, consisting of statutory management requirements ("SMRs") directed at conserving wildlife and keeping the land in good agricultural and environmental condition. Payments under the SPS may be reduced or excluded where there is non-compliance with the SMRs (known as "cross compliance breaches").

3. This claim seeks to challenge the decision of the Minister for Agriculture, Fisheries and Food ("the Minister"), exercising the powers of the Secretary of State for the Environment, Food and Rural Affairs ("SoS"), to impose a penalty reduction on the Claimant's claim for a single farm payment in 2014, on the grounds that the intentional acts of an employee in poisoning wild birds gave rise to a relevant cross-compliance breach directly attributable to the Claimant ("the Decision"). The Decision was communicated by a letter dated 25 January 2017 from the RPA to the Claimant, and thereafter reaffirmed by letter dated 13 April 2017 from the SoS.

4. Permission for the Claimant's application was given on 22 August 2017 by Sir Stephen Silber sitting as a High Court Judge. By his order made on that occasion Sir Stephen also gave permission for the National Farmers' Union ("NFU") to be joined as an Intervener.

Stody Estate and Allen Lambert

5. The Claimant ("Stody Estate") is a company which owns and manages some 4200 acres of arable and grazing land and forestry in North Norfolk. Stody Estate has been farmed by the MacNicol family for approximately 75 years; Charles MacNicol is currently the Managing Director. The Estate Manager, Ross Haddow, is responsible for day to day management of the estate, assisted by 15 full-time employees with occasional casual labour as required.

6. Allen Lambert had been employed as keeper on the estate since 1990. His job was multi-faceted, encompassing all aspects of estate security, animal and fowl husbandry and vermin control. It included acting as gamekeeper in respect of an annual 10-day "family shoot", for the purposes of which some 2500 pheasant and partridge poults were brought in and reared on the estate each year. Mr Lambert and his wife lived in a tied house on the estate.

7. In April 2013 Mr Lambert was arrested on suspicion of poisoning raptors on the estate: 10 buzzards and 1 sparrowhawk. On 2 October 2014 he was convicted of criminal offences under s.1 of the Wildlife Conservation Act 1981 arising from the poisoning of such wild birds.

8. In September 2015, the RPA notified Stody Estate that it was to be held "vicariously liable" for Mr Lambert's actions in killing the wild birds, which constituted a breach of the applicable SMR. The RPA indicated that it had decided to apply a reduction of 75% to the Estate's payment for 2014, on the basis that the killing of the raptors on the estate had been an "intentional" breach.

9. Stody Estate appealed to the Independent Agricultural Appeals Panel ("IAAP"). Following a hearing, the IAAP decided that although Mr Lambert's actions had been intentional, his intention could not be attributed to Stody Estate; in accordance with the decision of the CJEU in Case C-396/12 *Van der Ham v. College van Gedeputeerde Staten van Zuid Holland* ("*Van der Ham*") vicarious liability did not apply to European legislation. The IAAP concluded that some reduction was appropriate nevertheless and it recommended a 20% reduction.

10. The IAAP's decision and recommendation was referred to the SoS. By his Decision communicated in a letter to Stody Estate from Glenn Ford of the RPA dated 25 January 2017, the Minister, whilst taking into account a number of the findings of the IAAP exonerating Stody Estate itself from any involvement in Mr Lambert's actions, nevertheless concluded that the intentional acts of Mr Lambert acting within the scope of his employment were to be treated as those of the farmer, being Stody Estate. However, given the mitigating circumstances available to Stody Estate by reason of "*the extent to which the Estate took reasonable steps to prevent non-compliance and its approach to environmental issues",* the reduction to the annual payment was revised from 75% to 55%.

11. The issue for my decision is whether the Minister was entitled to penalise Stody Estate under the relevant EU law by virtue of intentional acts done by its employee.

The Regulatory framework

12. The principal regulation, establishing "common rules for direct support schemes for farmers under the common agricultural policy", is Council Regulation (EC) No 73/2009 ("Reg 73/2009").

13. The relevant penalty provision is Article 23 of Reg 73/2009 ("Article 23"):

"Article 23 Reduction or exclusion from payments in the event of non-compliance with cross compliance rules

1. Where the statutory management requirements or good agricultural and environmental condition are not complied with at any time in a given calendar year...and the non-compliance in question is the result of an act or omission directly attributable to the farmer who submitted the aid application in the calendar year concerned, the total amount of direct payments granted or to be

granted, following application of Articles 7, 10 and 11 to that farmer, shall be reduced or excluded in accordance with the detailed rules laid down in Article 24."

14. Article 2 of Reg 73/2009 includes the following definitions:

> *"(a) 'farmer' means a natural or legal person, or a group of natural or legal persons, whatever legal status is granted to the group and its members by national law, whose holding is situated within Community territory, as defined in Article 299 of the Treaty, and who exercises an agricultural activity;*
>
> *(b) 'holding' means all the production units managed by a farmer situated within the territory of the same Member State;"*

15. Cross-compliance is dealt with under Article 4 of Reg 73/2009:

> *"1. A farmer receiving direct payments shall respect the statutory management requirements listed in Annex II and the good agricultural and environmental condition referred to in Article 6.*
>
> *…*
>
> *2. The competent national authority shall provide the farmer, inter alia by use of electronic means, with the list of statutory management requirements and the good agricultural and environmental condition to be respected."*

16. Article 5 deals with SMRs:

> *"1. The statutory management requirements listed in Annex II shall be established by Community legislation in the following areas:*
>
> *(a) public, animal and plant health;*
>
> *(b) environment;*
>
> *(c) animal welfare.*
>
> *2. The acts referred to in Annex II shall apply as in force and, in the case of Directives, as implemented by the Member States."*

17. The material reference in Annex II, under "Point A Environment" is to Council Directive 79/409/EEC of 2 April 1979 ("CD 79/409/EEC") on the conservation of wild birds. UK legislation giving effect to CD 79/409/EEC is to be found in the Wildlife and Countryside Act 1981 which, at s.1, makes it an offence for any person

intentionally to kill, injure or take any wild bird. Notification of the SMR concerning wild birds is provided to UK farmers in the form of a leaflet instructing them that:

> *"You must not*
>
> *Intentionally kill, injure or take any wild bird.*
>
> *..."*

18. A subsequent implementing regulation, Regulation (EC) No 1122/2009 laid down "detailed rules for the implementation of [Reg 73/2009] as regards cross-compliance..." ("Reg 1122/2009"). Recital 75 of the Preamble to Reg 1122/2009 provides that:

> *"Reductions and exclusions should be established having regard to the principle of proportionality and the special problems linked to cases of force majeure as well as exceptional and natural circumstances. In the case of cross-compliance obligations, reductions and exclusions may only be applied where the farmer acted negligently or intentionally. Reductions and exclusions should be graded according to the seriousness of the irregularity committed and should go as far as the total exclusion from one or several aid schemes for a specified period. They should, with regard to the eligibility criteria, take into account the particularities of the various aid schemes."*

19. Further relevant provisions concerning controls relating to cross-compliance appear at Articles 47, 71 and 72 of Reg 1122/2009 as follows:

> *"**Article 47 General rules concerning non-compliance***
>
> *...*
>
> *2. The 'extent' of a non-compliance shall be determined taking account, in particular, of whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself.*
>
> *3. The 'severity' of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned.*
>
> *...*
>
> ***Article 71 Application of reductions in the case of negligence***
>
> *1. Without prejudice to Article 77, where a non-compliance determined results from the negligence of the farmer, a*

> *reduction shall be applied. That reduction shall, as a general rule, be 3% of the total amount as referred to in Article 70(8).*
>
> *However the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report...decide either to reduce that percentage to 1% or...not to impose any reductions at all.*
>
> ...
>
> ***Article 72 Application of reductions and exclusions in cases of intentional non-compliance***
>
> *1. Without prejudice to Article 77, where the non-compliance determined has been committed intentionally by the farmer, the reduction to be applied to the total amount referred to in Article 70(8) shall, as a general rule, be 20% of that total amount.*
>
> *However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report ..., decide to reduce that percentage to no less than 15% or, where appropriate, to increase that percentage to up to 100% of that total amount."*

The CJEU decision in Van der Ham

20. The Van der Ham case concerned the imposition of a penalty against a farmer, Mr Van der Ham, by the Dutch body responsible for administering single farm payments, arising from a cross-compliance breach in connection with muck-spreading. The manure had been spread by an agricultural contractor employed by an agricultural firm engaged by the farmer to do the work. The farmer challenged the reduction and the Dutch court referred questions to the CJEU, including in particular the following (the questions for the Court are set out at para 22 of the decision):

> *"Can "intentional non-compliance" be attributed to the beneficiary of the aid if a third party carries out the works on his instructions"*

21. The Court discussed that question at paras 43-53 of its decision, concluding as follows:

> "44. As the Advocate General has observed in point 58 of her Opinion, the system of penalties was laid down…to penalise beneficiaries of aid if they do not meet, on all of their holding, the mandatory requirements of cross compliance…
>
> 45. Under [the prior regulation, in the same form as Article 23], penalties are to be applied only in the case of infringement

of the cross-compliance requirements by negligence or intentional non-compliance.

46. Nevertheless, as the Advocate General noted in point 61 of her Opinion, the EU legislature wanted to make the beneficiary of aid responsible both for his own acts or omissions and those of third parties.

47. The question therefore arises of the criteria according to which beneficiary of aid may be held responsible for the act or omission of a third party who caused the non-compliance with the rules on cross-compliance.

48. It must be stated that that responsibility falls within the rules on liability for that beneficiary's *own act or omission*.

49. Consequently, to hold a beneficiary of aid responsible for an act or omission of a third party who carried out work on his plot on his behalf, it is necessary that the conduct of *that beneficiary* is intentional or negligent.

50. In such a case, even if the beneficiary of aid's *own conduct* is not directly the cause of that non-compliance, it may be the cause through the choice of the third party, the monitoring of the third party or the instructions given to the third party.

51. Moreover the responsibility of a beneficiary of aid for his negligence or his intentional conduct may be established independently of the intentional or negligent nature of the conduct of the third party who was the cause of the non-compliance with the rules on cross-compliance.

52. That interpretation is consistent with the objective of penalties for infringement of the rules on cross-compliance which seek to incentivise farmers to observe the existing legislation in the various fields of cross-compliance. First, the requirement that there must be intentional or negligent conduct by a beneficiary of aid for him to be held responsible for acts or omissions of third parties enables the incentive effect of those penalties…to be maintained. Second such an interpretation enables abuse to be prevented, since the beneficiary of aid cannot exculpate himself by sub-contracting the agricultural work on his plot, nor diminish his liability by adducing evidence that the third party concerned, for example, acted negligently in order to exclude his liability for non-compliance committed intentionally.

53. Consequently, the answer to the third question is that [Article 23] must be interpreted as meaning that, in the event of

> an infringement of the requirements of cross-compliance by a third party who carries out work on the instructions of a beneficiary of aid*, the beneficiary may be held responsible for the infringement if he acted intentionally or negligently* as a result of the choice or the monitoring of the third party or the instructions given to him, independently of the intentional or negligent nature of the conduct of the third party." (emphasis added)

22. The paragraphs of the Opinion of Advocate General Kokott (at ECLI:EU:C:2013:698) referred to by the Court in its reasoning are also instructive:

> "58. [Recital 75, set out at para 18 above] may be understood as confirming this approach. It states that a penalty system should be set up where *beneficiaries* receiving payments do not meet the mandatory requirements provided for…on all of their holding, taking into account the severity, extent, permanence and repetition of the non-compliance. If, on the other hand, the non-compliance does not originate with the beneficiary, there is no cause for a penalty. (emphasis in original)
>
> …
>
> 61. Considered together, the origin of [regulations dealing with cross-compliance breaches] point to the conclusion that a non-compliance is to be penalised only on the basis of the personal responsibility of the aid beneficiary, but that he need not have committed the non-compliance in person."

Parties' arguments as to effect of the regulations

23. Under Article 23 a farmer is only subject to a penalty if the act of non-compliance is "directly attributable" to him/her or it (if a company). Stody Estate's case is that a farmer may be liable for non-compliance caused by the acts or omissions of third parties but only where a direct connection is established between the farmer and such non-compliance. Mr Mercer QC, for Stody Estate, submitted that the overall scheme of the regulations points to the concept of "direct attribution" in this context as being based upon an assessment of the fault of the farmer in connection with the breach. He relied on the wording of para 75 of the Preamble to Reg 1122/2009: " *In the case of cross-compliance obligations, reductions and exclusions may only be applied where the farmer acted negligently or intentionally";* also Articles 71 and 72 of Reg 1122/2009 which set the level of penalty to be imposed by reference to the negligence (Article 71) or intention (Article 72) of the farmer. The wording of these provisions, submitted Mr Mercer, leaves no scope for a penalty based on a transferred liability.

24. The Decision was wrong, Mr Mercer argued, because there had been no investigation as to the fault (if any) of the farmer, in this case Stody Estate itself, for the killing of the wild birds by Mr Lambert. The effect of the regulations, Mr Mercer submitted, required an assessment to be made of the degree of culpability of Stody Estate itself in

connection with the poisoning of the wild birds by Mr Lambert. In making the Decision, the Minister had simply relied upon Mr Lambert's convictions. The Minister had in effect held Stody Estate vicariously liable for the actions of its employee (as the original communications from the RPA had, in terms, stated). This was directly contrary, Mr Mercer submitted, to the decision in van der Ham.

25. Mr Robb, for the NFU, adopted a more radical approach: he submitted that there could only be a relevant breach of the cross-compliance requirements where "the farmer" (as defined) himself/herself/itself had intentionally killed the birds. The effect of the regulations, properly understood, was narrow, he argued, being limited to breaches intentionally committed by the farmer alone. A SMR forbidding the intentional killing of wild birds could only be breached by the farmer acting intentionally, there was no scope for negligence in connection with breaches of this particular SMR, Mr Robb submitted. He pointed out that Mr Lambert was not the farmer, only an employee. Mr Lambert was not in such a position of responsibility that he could be said to be a "directing mind and will" of Stody Estate for these purposes (see the discussion in *MGFM Asia Ltd v. Securities Commission* [1995] 2 AC 500 per Lord Hoffman at 506-12). Mr Robb suggested that the Managing Director of the company, Charles MacNicol, possibly also the Estate Manager, Mr Haddow, were the only persons who could properly be said to be Stody Estate for these purposes; had either of them killed, or encouraged the killing of, the raptors then in those circumstances, submitted Mr Robb, it might be said that "the farmer" had intentionally killed the birds, but that was clearly not the case here, where Mr Lambert had acted without either man's knowledge, still less on their instruction or with their encouragement.

26. Mr Peretz QC, for the SoS, pointed out that the positions adopted by both Stody Estate and the NFU would give rise to an anomalous and unjust situation whereby the owner of two adjoining farms one of which was managed by, for instance, his or her son, could be penalised if they themselves were to kill wild birds on either holding, but could not be penalised where the son was responsible for killing birds on the farm which he managed. Mr Peretz argued that if either of the interpretations for which Mr Mercer or Mr Robb contended were right then farmers could simply arrange their affairs so as to distance themselves from the intentional acts of others, creating companies to act as the "farmer", or delegating management. Further, the extreme position adopted by the NFU would effectively rob the cross-compliance requirements of all potency, as the intentional acts of only a vanishingly small class of persons could engage liability on the part of the farmer.

27. Mr Peretz accepted that the concept of direct attribution in Article 23 necessarily engaged the question of fault on the part of the farmer. He submitted, however, that Stody Estate and the NFU's cases failed to grapple with the question of whose acts are to be regarded as those of the farmer for the purpose of assessing such fault. Mr Peretz stressed that a corporate entity can act only through particular natural persons. As the definition of "farmer" in the regulations includes a legal person a coherent approach to the application of Article 23 must, Mr Peretz argued, enable one to identify a particular natural person whose acts/omissions are to be treated as those of the farmer. The proper approach was what Mr Peretz described as a "functional" one: to look at the role in the business of the person whose acts had given rise to a cross compliance breach, and to ask whether that person was integral to the business

and authorised to take decisions in the area addressed by the particular SMR. Where, as here, Mr Lambert had been given a high degree of autonomy and responsibility and was trusted to take decisions in connection with the maintenance of the estate and vermin control, then his intentional acts were properly to be treated as those of Stody Estate, the farmer. Mr Peretz drew a comparison with decisions in the area of competition law (referring me to *Musique Diffusion Francaise v. Commission* [1983] ECR 1825; *Parker Pen v. Commission* [1994] ECR II-549). In such cases, he pointed out, the CJEU had had no difficulty in ascribing the actions of employees, in breach of competition law, to the company itself for the purposes of imposing a penalty.

Discussion and conclusions

28. The Van der Ham decision appears quite clear to me: in determining whether a penalty is to be applied for a cross-compliance breach the focus is required to be squarely on the level of culpability of the beneficiary of aid, ie the farmer him/her/itself. That is how the phrase "... *directly attributable to the farmer...*" in Article 23 is to be understood, according to the Court in Van der Ham.

29. Mr Peretz sought to suggest that whilst the Court in Van der Ham determined that where the negligence or intent is that of a third party then the farmer will not be liable unless he himself has failed in some way, the decision is effectively silent as to who a third party is. Mr Peretz pointed out that the third party in Van der Ham was an independent contractor and not an employee.

30. I bear in mind that EU regulations are to be interpreted so as to ensure, as far as possible, equal and uniform rights and obligations across Member States, regardless of the (inevitable) variations and differences of their internal legal systems and domestic law. Although I was not treated to a comprehensive overview of the comparative law of Member States relating to the attribution of liability for third parties/employees/independent contractors, Mr Mercer submitted, and I did not understand Mr Peretz to disagree, that there is no uniform understanding across Member States of the distinction between employees and independent contractors, such as is recognised in this jurisdiction. It could not be right, therefore, to confine the Van der Ham decision to a situation where cross-compliance breaches have resulted from the actions of an independent contractor, as opposed to an employee. In my view, when discussing the liability of a farmer for the acts of "third parties" the Court was using the term in a generic way to refer to any persons other than the farmer him/her/itself. This is plain also from the continual emphasis, in the Court's discussion, upon the negligence/intention of the "beneficiary of the aid".

31. I do not accept Mr Peretz' submission that the proper application of Art 23 requires one to be able to identify a natural person whose acts are always to be treated as those of the farmer, where the farmer is a corporate body. In my view Article 23 is more nuanced; it does not require the acts comprising non-compliance to have been committed by the farmer. Indeed the Court in Van der Ham stressed more than once that the farmer could be subject to a penalty notwithstanding that the acts comprising non-compliance had been committed by someone else. I agree with Mr Mercer that the key is to be found in the phrase *"...the non-compliance in question is a result of an act or omission <u>directly attributable</u> to the farmer..."* The question is what rule of

attribution was intended to apply for the purposes of determining whether a company has committed an intentional breach of a cross compliance requirement.

32. Although Mr Peretz specifically, and rightly, eschewed any reliance upon the doctrine of vicarious liability, he submitted that the regulations taken together with the wording of the SMR permit the intent of the employee to be attributable to the farmer. The acts of the employee are attributable to the undertaking, and the intent or negligence of the employee was, he argued, the intent or negligence of the farmer. Notwithstanding Mr Peretz' express disavowal, what he was describing seemed to me indistinguishable from an assertion of vicarious liability on the part of the farmer for the acts of his employee. Mr Peretz' case involved, he said, treating Mr Lambert as the "farmer": at para 6 of his skeleton argument Mr Peretz asserted that "[Mr Lambert's] acts and intentions…are the acts and intentions of the farmer (Stody)". Yet the definition of "farmer" in the regulations, together with the use by the Court in Van der Ham of the term "beneficiary of aid", seems to me to make it quite plain that "farmer" is restricted to the person owning the land and applying for the single farm payment; the term cannot be extended to include some/all of the farmer's employees.

33. I was not persuaded by the analogy that Mr Peretz sought to draw with competition law. The regimes are very different: competition law operates as a deterrent whereas the primary purpose of the SPS is to incentivise, to encourage farmers to conserve wildlife and the environment. In competition law notions of negligence/intent are not relevant to liability; the enquiry is as to whether or not there has been a concerted practice between undertakings. Moreover, as Mr Robb pointed out, the competition law cases relied on by Mr Peretz concern liability deriving from the terms of contracts entered into by the companies in question, not from the tortious acts of company employees. Most tellingly perhaps, at no point in the Advocate General's Opinion, nor in the Van der Ham decision itself, is there any reference to competition law.

34. Both Mr Robb and Mr Peretz pointed to the fact that the SMR dealing with wild birds is couched in terms of intentional killing ("You must not intentionally kill…"), leaving no apparent opening for negligence on the part of the farmer in connection with a breach. Mr Robb submitted that the effect of this SMR was to restrict the levying of penalties to a situation where the farmer has him/her/itself committed the crime of killing wild birds; Mr Peretz suggested that it must be taken to support his case that the crime of killing wild birds committed by a sufficiently trusted employee was to be taken as the intentional act of the farmer who employed him.

35. Mr Peretz also relied on difficulties of enforcement, of establishing contributory fault on the part of the farmer; however he conceded in argument that this would not be sufficient, in itself, to require a particular interpretation of the regulations. I note, in this regard, the approach of the Court in Van der Ham to an evidential presumption adopted by the Dutch authorities: the Court had no objection, provided that an opportunity was given to the farmer to rebut the presumption (see the discussion at paras 38-42 of the Van der Ham decision).

36. Nor do I accept the narrow construction for which Mr Robb contended on behalf of the NFU. If his interpretation is right then Stody Estate could only be penalised for the killing of wild birds on the estate if Mr MacNicol (possibly also Ross Haddow) himself had committed the offences of which Mr Lambert was convicted. In my view that interpretation robs the key phrase "directly attributable to the farmer" in Article

23 of all the flexibility which the Court in Van der Ham intended it should have; moreover it would, as Mr Peretz pointed out, effectively emasculate the incentive/penalty regime as it applies to the SMR dealing with the killing of wild birds, or indeed any other SMR couched in similar terms.

37. I have concluded that in the context of the regulations as explained by the Court in Van der Ham, the SMR banning the intentional killing of wild birds is to be understood as descriptive of an activity which is not to take place on the farmer's land. This interpretation is supported by the wording of Article 4 which requires that the farmer "shall respect" the SMRs. If there is intentional killing of wild birds, by anyone, on the farmer's holding, then the regime for the imposition of a penalty for a cross-compliance breach is potentially engaged. Whether or not a penalty is properly levied under the regulations will thereafter depend upon an assessment of the culpability of the farmer him/her/itself in connection with the killing of the birds. Obvious examples of circumstances in which poisoning wild birds might be said to be "directly attributable" to the farmer are: a positive instruction/encouragement given by the farmer (if a natural person) or farm manager (if a company) to an employee to kill the birds, a failure to provide reasonable instruction or training, or a failure to take steps to end the activity upon becoming aware of killings taking place. This is entirely consistent with the approach of the Court in Van der Ham.

38. In my view, the SoS was not entitled to treat Mr Lambert's convictions for killing wild birds on the Stody Estate, without more, as satisfying the requirement in Article 23 that cross-compliance breaches be "the result of an act or omission directly attributable to the farmer". Some further enquiry directed at the level of fault (if any) on the part of Stody Estate in connection with Mr Lambert's actions was required. In the absence of any finding of fault there was no proper basis for the imposition of a penalty under Article 23. It follows that there will be an order quashing the Decision.