Trinity Term
[2026] UKSC 26
On appeal from: [2024] EWCA Civ 1387

JUDGMENT

Akbars Restaurant (Middlesborough) Limited (Appellant) *v* Secretary of State for the Home Department (Respondent)

before

Lord Sales, Deputy President
Lord Leggatt
Lady Rose
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
27 July 2026

Heard on 27 January 2026

Appellant
Sohail Mohammed
(Instructed by Kingston Law Limited)

Respondent
Zane Malik KC
Iulia Stinga
(Instructed by The Government Legal Department)

LORD SALES (with whom Lord Richards, Lord Leggatt, Lady Rose and Lady Simler agree):

1. Section 15 of the Immigration, Asylum and Nationality Act 2006 ("section 15" and "the 2006 Act", respectively) confers a power on the Secretary of State to issue a notice to impose a financial penalty on a person who employs an immigrant who has no permission to work in the UK. This appeal is concerned with the validity of a civil penalty notice ("the CPN") issued by the respondent Secretary of State to the appellant, which is a company which operates a restaurant in Middlesbrough. According to the CPN, the appellant had breached section 15 by employing an adult subject to immigration control who was not entitled to work in the UK. The CPN required the appellant to pay £15,000 as a penalty. The appellant contends that the CPN did not give proper reasons for the imposition of the penalty, as required by section 15, and was invalid. The appeal gives rise to a question about the proper approach to the interpretation of a statute in light of its purpose.

Legislative framework

2. The Secretary of State has responsibility pursuant to the Immigration Act 1971 for regulating and maintaining effective immigration controls.

3. Section 15 of the 2006 Act provides as follows:

> **"15 Penalty**
>
> (1) It is contrary to this section to employ an adult subject to immigration control if—
>
> > (a) he has not been granted leave to enter or remain in the United Kingdom, or
> >
> > (b) his leave to enter or remain in the United Kingdom—
> >
> > > (i) is invalid,
> > >
> > > (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or

(iii) is subject to a condition preventing him from accepting the employment.

(2) The Secretary of State may give an employer who acts contrary to this section a notice requiring him to pay a penalty of a specified amount not exceeding the prescribed maximum.

(3) An employer is excused from paying a penalty if he shows that he complied with any prescribed requirements in relation to the employment.

(4) But the excuse in subsection (3) shall not apply to an employer who knew, at any time during the period of the employment, that it was contrary to this section.

(5) The Secretary of State may give a penalty notice without having established whether subsection (3) applies.

(6) A penalty notice must—

(a) state why the Secretary of State thinks the employer is liable to the penalty,

(b) state the amount of the penalty,

(c) specify a date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid,

(d) specify how the penalty must be paid,

(e) explain how the employer may object to the penalty or make an appeal against it, and

(f) explain how the Secretary of State may enforce the penalty.

(7) An order prescribing requirements for the purposes of subsection (3) may, in particular—

(a) require the production to an employer of a document of a specified description;

(b) require the production to an employer of one document of each of a number of specified descriptions;

(c) require an employer to take specified steps to verify, retain, copy or record the content of a document produced to him in accordance with the order;

(d) require action to be taken before employment begins;

(e) require action to be taken at specified intervals or on specified occasions during the course of employment."

4. An order has been made setting out prescribed requirements for employment checks to be carried out by employers, for the purpose of the application of the excuse set out in section 15(3).

5. Section 19 of the 2006 Act provides that the Secretary of State shall issue a code of practice specifying factors to be considered by her in determining the amount of a penalty imposed under section 15. The Secretary of State has issued a series of such codes of practice. The codes of practice set out matters such as the sorts of checks which employers are expected to carry out in relation to immigrant workers employed by them.

6. Section 16(1) of the 2006 Act provides for an employer who receives a penalty notice to give notice to the Secretary of State if they object to the penalty notice on the grounds that "(a) he is not liable to the imposition of a penalty, (b) he is excused payment by virtue of section 15(3), or (c) the amount of the penalty is too high". Section 16(4) states that where the Secretary of State receives a notice of objection "he shall consider it and— (a) cancel the penalty, (b) reduce the penalty, (c) increase the penalty, or (d) determine to take no action" (ie leave the original penalty in place). Section 16(5) provides that where the Secretary of State considers a notice of objection he shall have regard to the code of practice under section 19 (in so far as the objection relates to the amount of the penalty) (paragraph (a)); "inform the objector of his decision before the end of the prescribed period or such longer period as he may agree with the objector"

(paragraph (b)); issue a new penalty notice if the penalty is increased (paragraph (c)); and "if he reduces the penalty, notify the objector of the reduced amount" (paragraph (d)).

7. Section 17 provides for an employer who has given a notice of objection to have a right of appeal to a court. Where the employer's principal place of business is in England and Wales, the court is the county court. Section 17(3) stipulates that the appeal "shall be a re-hearing of the Secretary of State's decision to impose a penalty" and is to be determined having regard to the code of practice issued under section 19 (paragraph (a)) and "(b) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware)".

Factual background and the proceedings in the lower courts

8. On 15 January 2023 immigration officers conducted an inspection of the appellant's restaurant, where they identified one migrant who was working illegally, his leave to remain in the UK having expired ("the worker").

9. On 9 February 2023 the Secretary of State, acting by officials in the usual way, sent an information request to the appellant seeking information, including about the pre-employment document checks which had been carried out in relation to the worker. No response was received.

10. On 13 March 2023 the Secretary of State issued the CPN to the appellant for a penalty of £15,000. Under the heading "You are liable for a civil penalty" it stated:

> "We encountered a suspected breach of section 15 by your business on 15/01/2023. We have considered the information and evidence in your case, and concluded that you have breached section 15 … by employing an adult subject to immigration control who has a) not been granted leave to enter or remain in the UK, or b) their leave to enter or remain in the UK is invalid or has ceased to have effect, or c) who is subject to a condition preventing them from accepting the employment in question."

11. In this way the CPN listed all the options in section 15(1) without stating which one the Secretary of State thought applied in relation to the worker. In a section headed "Your penalty breakdown", the CPN stated that the "Penalty reason" was "No right to work", again without stating the basis, as specified in the options in section 15(1), on which that conclusion had been reached. The CPN indicated the evidence (interview records and photographic evidence) held by the Secretary of State which "shows that the

illegal worker … identified was employed by you under a contract of service or apprenticeship and carried out work for which they did not have permission to undertake" (again, without stating which particular ground in section 15(1) was relied on). The CPN explained how the appellant should pay the penalty (with a discount for early payment) and how it could enter an objection to the notice.

12. Attached to the CPN was a document headed "Statement of Case". This explained why the Secretary of State believed that the worker was employed in the appellant's restaurant and that the appellant had not established a statutory excuse under section 15(3). It stated, "Please be advised that Home Office records show that [the worker] does not have the right to work in the UK", but did not set out which of the options in section 15(1) the Secretary of State considered applied. Under the heading "Conclusion" it was simply stated that the worker "was employed by you in breach of section 15 …". The Statement of Case also explained how the penalty amount had been calculated, taking account of certain mitigating factors.

13. On 9 April 2023 the appellant's solicitor emailed a completed objection form to the Secretary of State, which stated that the worker "was lawfully present in the UK and had no restriction preventing him from taking employment". The covering email contended that the worker was lawfully present in the UK and had applied for an extension of his leave to remain by the time of the inspection; it continued "please provide evidence which demonstrates that the alleged illegal worker has no right to work in the UK. The provision of such information is incredibly important as it will form the basis of whether [our] client will seek to appeal the penalty notice to the county court". No further explanation or evidence was provided by the Secretary of State.

14. On 26 April 2023 the Secretary of State issued an Objection Outcome Notice. This rehearsed the fact that the CPN had been issued for a penalty of £15,000 for breaching section 15 by employing an adult subject to immigration control by reference to all the options set out in section 15(1) (again without indicating which one applied), and stated that the appellant remained liable for a penalty of £15,000 (with a discount available for early payment).

15. On 12 May 2023 the appellant filed an appeal in the county court against the CPN. The appellant repeated the substance of its objection to the CPN.

16. Correspondence ensued between the appellant's solicitor and the Secretary of State, in the course of which the Secretary of State confirmed her decision to uphold the CPN, which she said had been "issued pursuant to section 15(1)(b)(iii)".

17. On 21 July 2023 the Secretary of State filed and served the evidence on which she proposed to rely at the hearing of the appeal, which was to the effect that the worker's

leave to remain had expired so that, at the time of the inspection, he was an overstayer who did not have permission to work in the UK.

18. By email dated 8 August 2023 to the Secretary of State, the appellant's solicitor observed that this appeared to be a reference to the ground of liability set out in section 15(1)(b)(ii), whereas the impression had been given previously that section 15(1)(b)(iii) was being relied on. The email stated that the CPN was "defective and invalid for non-compliance with the 2006 Act". The Secretary of State replied to say that in her view both section 15(1)(b)(ii) and (iii) applied.

19. At the hearing in the county court before HHJ Gargan, the appellant raised its objection to the validity of the CPN as a preliminary issue. The appellant also maintained that it was not liable to the imposition of the penalty and that the penalty amount was excessive.

20. The Secretary of State submitted that the CPN was valid: it complied with section 15(6)(a) because it stated that there had been a breach of section 15 for one or more of the reasons set out in section 15(1). No greater particularity was required. The Secretary of State also submitted that since the appeal was a re-hearing, in which the court had power to accept evidence which was not available to her when the CPN was issued, it was open to the court to find that the CPN was justified for a reason different from the one originally relied on by the Secretary of State.

21. The judge dismissed the appeal. He noted that the Secretary of State's position was that by the form of the CPN she was reserving to herself the right to pursue any or all of the limbs of section 15(1) and that her case was that the CPN satisfied the requirement in section 15(6)(a) because it said that there was a breach of section 15 for one or more of the reasons given in that section, without the need for greater particularity (paras 26–27); and said that the appellant's solicitor did not seriously challenge that argument (para 28). Nonetheless, the point about the validity of the CPN had been taken and had not been abandoned. The judge accepted the Secretary of State's submission on that point, saying (para 34), "the whole purpose of section 15 is to impose a penalty on employers in respect of employees who have no right to work. The particulars given in section 15 identify the circumstances in which an individual might have no right to work". There was no prejudice or injustice to the appellant "in allowing the [Secretary of State] to rely on the notice as drawn", so as to permit her to rely on the ground set out in section 15(1)(b)(ii) and the evidence adduced by her in support of that ground: para 41.

22. The appellant appealed to the Court of Appeal on a single ground for which permission to appeal was granted, namely that the judge had erred in law in determining that the CPN complied with section 15(6), notwithstanding that it listed all the statutory reasons in section 15(1) (albeit in the alternative), which are mutually exclusive; and had

erred in law in determining that the Secretary of State could change the reason being relied on shortly before the appeal hearing and without re-issuing the penalty notice.

23. The Court of Appeal (Lewison, Coulson and Zacaroli LJJ) dismissed the appeal: [2024] EWCA Civ 1387; [2025] 1 WLR 1306. Zacaroli LJ gave the substantive judgment, with which the other members of the court agreed.

24. The appellant's principal submission was that the CPN was invalid because under the heading "You are liable for a civil penalty" it referred to all the grounds in section 15(1) (para 3 above) and this could not be cured by anything appearing later in the notice. Zacaroli LJ rejected that submission, holding that in determining whether a penalty notice satisfies the requirement in section 15(6)(a) it is necessary to look at the notice as a whole: para 32.

25. The appellant's alternative submission was that, even reading the CPN as a whole, it failed to specify which limb of section 15(1) was relied on and was defective for that reason. The contention was that the requirement in section 15(6)(a) for the Secretary of State to state why she thinks the employer is liable to the penalty requires that she should state which of the grounds in section 15(1) she thinks applies. Zacaroli LJ rejected that submission as well.

26. Zacaroli LJ held that section 15(6)(a) should not be read in that restrictive way, on the grounds that the language of the provision is general and non-prescriptive; as a matter of ordinary language, a notice which identifies to the employer the facts and evidence on which the Secretary of State has reached the conclusion that a particular person, who does not have the right to work, is working under a contract of employment with the employer in breach of section 15(1) is a notice which states "why" the Secretary of State thinks the employer is liable to a penalty; and greater specificity would be required in the wording of section 15(6)(a) to impose an obligation on the Secretary of State to be more specific: paras 34–35.

27. Section 15(6)(a) "must be seen in light of the statutory scheme as a whole and its purpose", which was to discourage illegal employment of persons subject to immigration control, and does so by placing the onus under section 15(3) on an employer to carry out the necessary checks on those it employs: para 36. Under section 17(1), the same onus lies on an employer who appeals. In Zacaroli LJ's view this provided the answer to the appellant's submission that a penalty notice has the effect of a judgment and, without specifying the limb of section 15(1) relied on, the employer could not know whether to challenge it: paras 38–40. Further, according to Zacaroli LJ, on an appeal, which is a re-hearing of the decision to impose the particular penalty on the particular basis originally identified, it would be open to the court to allow the Secretary of State to rely on a different limb of section 15(1) from that referred to in the penalty notice, and this again

indicates that section 15(6)(a) should not be read with the restrictive meaning contended for by the appellant: paras 41–42 and 45.

28. The appellant now appeals to this court.

The parties' submissions

29. The appellant's submission in this appeal, as in the courts below, is that the CPN was invalid because it failed to comply with the requirement in section 15(6)(a) that a penalty notice "must … state why the Secretary of State thinks the employer is liable to the penalty". By specifying in the CPN all the grounds in section 15(1), which are mutually exclusive, as part of the reason for it being issued, the Secretary of State had not actually stated why she thought that the employer is liable to the penalty set out in the CPN and had failed to give the appellant fair notice of her reasons why a penalty was to be imposed.

30. Mr Zane Malik KC for the Secretary of State supports the decision and reasoning of the Court of Appeal. In that regard he emphasises the purpose which he says Parliament had in introducing the regime, which was to encourage employers to carry out reasonably diligent checks on workers before and after the point of their recruitment, while they remained so employed; the mischief which the regime was intended to address was illegal working in the UK. To accept the interpretation of section 15(6)(a) proposed by the appellant would allow a technical argument to frustrate the aim of the statutory regime.

31. Mr Malik also submits, in the alternative, that if (contrary to the view of the Court of Appeal) there was a defect in the CPN, that defect did not render the CPN invalid or unlawful. He seeks to rely on *R v Soneji* [2006] 1 AC 340, in which the House of Lords articulated a nuanced approach to determining the legal effect of a failure to comply with a statutory procedural requirement, indicating that it is necessary to ask what Parliament would have intended the effect of the breach of the requirement to be as regards the validity of a step taken as a result of that breach. He submits that in the present case the appellant was in no doubt as to why the Secretary of State took the view that it was liable to the imposition of a penalty under section 15; other requirements were complied with, including that the appellant was advised of its right to object to the CPN, the grounds on which it might object and the procedure for filing the notice of objection; and the purposes of serving a penalty notice and of section 15(6)(a) were satisfied. There had therefore been substantial compliance with the requirements of that provision and of section 15 as a whole, so that it should be inferred that in these circumstances Parliament intended that the CPN should be treated as valid. In support of that submission, Mr Malik further relies, in particular, on *JN (Cameroon) v Secretary of State for the Home Department* [2009] EWCA Civ 307; [2009] Imm AR 615 ("*JN (Cameroon)*"), para 27.

Analysis

32. In my view, Zacaroli LJ was correct to say (see para 24 above) that to assess whether a penalty notice issued under section 15 complies with the requirements of that provision it is necessary to look at the substance of the notice read as whole. That leaves the question whether, reading the CPN as a whole, it did comply with section 15(6)(a).

33. This depends upon the proper interpretation of section 15(6)(a), read in its context and having regard to its purpose. See, among many authorities on the proper approach to statutory interpretation, *Rossendale BC v Hurstwood Properties (A) Ltd* [2021] UKSC 16; [2022] AC 690; *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 29–31 ("*R (O)*"); *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28; [2023] 1 WLR 2594 ("*PACCAR*"), paras 40–42; *BlueCrest Capital Management (UK) LLP v Revenue and Customs Comrs* [2026] UKSC 18; [2026] STC 1203, paras 56–58. "Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered": *R (O)*, para 31.

(a) Constitutional context

34. The context in which section 15(6)(a) appears has an important constitutional dimension. Section 15 and the accompanying provisions in the 2006 Act create a regime under which the state, by action by the Secretary of State, may impose a penalty on a person. It is described as a civil penalty, which has certain implications regarding the procedure to be followed. But the interpretation of section 15 has to proceed against the background that the regime is penal in nature. Where the state imposes a penalty of this kind, it is to be expected that proper reasons should be given to explain why it is doing that and to show that its action is justified. The person affected is entitled to know why the penal power of the state has been invoked against them. The giving of reasons also imposes appropriate discipline on the state to ensure that such power is being exercised properly and serves as a practical safeguard against capriciousness. In my view, in the context of the exercise of the penal power of the state, these are considerations and values which Parliament, acting as a reasonable legislature in a liberal democracy which respects the rule of law, is to be taken to have wished to promote in the operation of the regime.

35. Further, fairness requires that the person affected should be given accurate and sufficient information about the reasons why a penalty has been imposed, so that they can make an informed decision about whether to appeal pursuant to section 17, can understand what evidence they will need to adduce in support of such an appeal and can have a reasonable opportunity to contest those reasons in court if they do appeal. This is relevant both to the basic issue of whether the immigrant worker falls within one of the limbs of section 15(1) and also to the issue whether the employer took reasonable steps to check

whether such a problem existed, which may be relevant to the operation of the defence under section 15(3) and also to arguments regarding mitigation affecting the amount of the penalty. It is well established that Parliament legislates on the footing that the exercise of power by a public authority which has a detrimental impact on a person should be carried out in a fair manner: see *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531 (a case concerning the procedure required to be adopted by the Secretary of State before exercising his power to set a minimum period which a prisoner would have to serve in prison for the purposes of retribution and deterrence before being eligible for consideration for parole) at p 560, per Lord Mustill: "where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances".

36. The alternative cases described in section 15(1) are mutually exclusive. If a court was responsible for imposing a fine of £15,000 for breach of section 15, it would not be acceptable for it to give a judgment simply saying that the case before it fell within one or other of three mutually exclusive cases, without saying which one. Similarly, if a person was charged with an "offence" of breaching section 15(1), it would be incumbent on the prosecution to state which limb of section 15(1) was being relied on.

37. Both these points are relevant here. The issuing of a penalty notice is an operative judgment by the state that a penalty should be imposed, and may be the only one (if there is no appeal). There is no good reason why the fact that the Secretary of State is the person who makes the decision to impose the penalty should make any difference as to the standard of explanation for that decision which is to be regarded as acceptable. A person is entitled to know why a penalty has been imposed on them, and simply saying that one or other of three mutually inconsistent grounds applies does not tell them that. In addition, the regime is structured in such a way that the penalty notice operates as a form of charge levelled against an employer, which may fall to be scrutinised by a court if the employer decides they wish to test the imposition of the penalty on an appeal to the county court. This point is reinforced by section 15(5) (para 3 above): the Secretary of State may give a penalty notice without having established whether subsection (3) applies, which means that the employer may have to appeal to test whether a defence arises under that provision, and in doing so may challenge the penalty on other grounds as well (including that the grounds relied on by the Secretary of State for issuing the notice could not be made out by her). Since a penalty notice also serves that charge-laying function, there is no good reason why the Secretary of State should be subject to a lesser standard in particularising the case actually being made against the employer than any other prosecuting authority which invokes the penal power of the state.

38. In my view, these are important factors which are relevant in informing the approach to be adopted when interpreting section 15, and section 15(6)(a) in particular.

(b) The wording of section 15(6)(a), read in the context of section 15 as a whole

39. Section 15(2) authorises the Secretary of State to give an employer a penalty notice only where she has established that the employer has acted contrary to section 15(1). A distinction is drawn in this respect between section 15(1) and section 15(3): section 15(5) permits the Secretary of State to give a penalty notice without having established whether section 15(3) applies. Since the three limbs in section 15(1) are mutually exclusive, the Secretary of State (acting by her officials) must necessarily consider and decide which one (if any) of those limbs applies, in order to be able to decide whether her power under section 15(2) to give a penalty notice has arisen.

40. Section 15(6)(a) states that a penalty notice "must … state why the Secretary of State thinks the employer is liable to the penalty". It is expressed in mandatory terms. In setting out an obligation on the Secretary of State to state why she thinks the employer is liable to the penalty which the Secretary of State has decided to impose under subsection (2), section 15(6)(a) requires the Secretary of State to explain her thought process in coming to that view. This means—reading the language used according to its natural and ordinary meaning in the overall context of section 15—that she must state her reasons, including by explaining which of the limbs of section 15(1) she thinks applies.

41. This interpretation of section 15(6)(a) is reinforced by the constitutional context, as set out above. Furthermore, since the provision applies where the Secretary of State must necessarily have formed a positive view about which limb of section 15(1) applies, there is no sensible reason why she should not be required to explain that to the employer, and section 15(6)(a) should be interpreted accordingly.

42. The Court of Appeal placed weight on the fact that, if an employer wishes to invoke the excuse under section 15(3), the onus is on them to show that they complied with any prescribed requirements in relation to the employment. In my view, however, consideration of section 15(3) cannot displace the natural interpretation of section 15(6)(a) set out above. That is for several reasons: (i) section 15(3) does not impose a duty on the employer to do anything; it merely provides for the employer to have an excuse in certain circumstances, so in interpreting section 15 it cannot be presumed that the employer must have carried out checks; (ii) the Secretary of State may impose a penalty charge without consideration of any defence under section 15(3) (see section 15(5)), and section 15(6)(a) imposes an obligation on the Secretary of State irrespective of whatever may be the position under section 15(3); (iii) section 15(3) sets out an excuse which an employer may seek to make out if it transpires that they are otherwise liable to pay the penalty charge set out in the notice, whereas the issue on the interpretation of section 15(6)(a) relates to what the Secretary of State is required to set out at the prior stage of issuing the notice itself; (iv) an employer may have other defences (in particular, it is a defence to the imposition of a penalty if the notice imposing the penalty charge should not have been issued by the Secretary of State in the first place) and the employer

is entitled to be told the nature of the case against them so that they can know whether they have such a defence; and (v) in any event, the possibility that the employer might have carried out some checks, with a view to gaining protection by raising an excuse under section 15(3), cannot outweigh the points at paras 34–38 above and at paras 43–46 below regarding the proper interpretation of section 15(6)(a).

(c) The context of the statutory scheme established by the wider group of provisions

43. Section 15 is part of a group of provisions comprising sections 15 to 19 of the 2006 Act, which also form part of the context in the light of which section 15(6)(a) falls to be interpreted. The effective operation of those provisions requires that the Secretary of State should state which limb of section 15(1) she thinks applies in the particular case.

44. Section 16 (notice of objection) (para 6 above) presupposes that an employer in receipt of a penalty notice is in a position to explain any defence available to them under subsection (1), including that "he is not liable to the imposition of a penalty". Among other things, this requires that they are able to tell from the penalty notice which limb of section 15(1) is being relied on by the Secretary of State, so that they can deny that charge.

45. Section 16(4) says that where the Secretary of State receives a notice of objection she "shall consider it" and take action in light of it, which may consist of cancelling the penalty (paragraph (a)). Accordingly, when a notice of objection is sent, the Secretary of State has to go through the relevant mental process again, and the employer can only assist her to do that if they know what the Secretary of State's original reasoning process was. Further, one of the grounds on which the employer may seek to persuade the Secretary of State to cancel the penalty is by showing that the Secretary of State was in error in thinking previously that the limb of section 15(1) relied on by her was made out, and to be able to do that the employer needs to know from the penalty notice which limb that was.

46. Under section 17(1) (para 7 above) an employer may appeal on the ground that they are "not liable to the imposition of a penalty", which may be established if the employer can show that the limb of section 15(1) relied on by the Secretary of State is not made out. Again, the employer is only able to pursue an appeal in that way if they know which limb of section 15(1) was relied on by the Secretary of State. In such a case, the court may allow the appeal and cancel the penalty: section 17(2)(a). As stated in section 17(3) the appeal is a re-hearing "of the Secretary of State's decision to impose a penalty", meaning that the focus of the appeal is the decision actually taken by the Secretary of State, including the limb of section 15(1) which she relied on. The Secretary of State is not permitted to defend the appeal by relying on a limb which has not been specified. The appeal is to be determined having regard to any other matters which the court thinks relevant, including matters of which the Secretary of State was unaware (section

17(3)(b)), but this just means that the Secretary of State may adduce new evidence bearing on the matters actually decided by her (including, eg, whether a person was working for the employer). It is not a provision which permits the Secretary of State to change the basic nature of the case against the employer on an appeal.

(d) Purpose

47. Mr Malik submits that section 15(6)(a) has to be interpreted in the light of its purpose, and sought to characterise the purpose as set out at para 30 above, in an effort to gloss the meaning of the language used. In my view, this submission is unsustainable. Mr Malik's appeal to the general purpose of section 15 is pitched at a level which is too general and abstract, and is untethered from the language used by Parliament in section 15(6)(a), read in context. Determination of the purpose of a statutory provision has to be linked to the language Parliament has chosen to use. "[I]t is the words of the provision itself read in the context of the section as a whole and in the wider context of a group of sections of which it forms part and of the statute as a whole which are the primary means by which Parliament's meaning is to be ascertained: [*R (O)*], paras 29–30 (Lord Hodge)": *PACCAR*, para 42.

48. The drafter will often seek to take account of a number of objects when drafting legislation, so that the text of a provision strikes a balance between them. In their joint speech in *Maunsell v Olins* [1975] AC 373, at p 393, Lord Simon of Glaisdale and Lord Diplock warned against a simplistic approach to construction based on an assumption that the drafter has sought to remedy only one mischief, and discounted the crude idea that a statutory provision has only one statutory objective:

> "For a court of construction to constrain statutory language which has a primary natural meaning appropriate in its context so as to give it an artificial meaning which is appropriate only to remedy the mischief which is conceived to have occasioned the statutory provision is to proceed unsupported by principle, inconsonant with authority and oblivious of the actual practice of parliamentary draftsmen. Once a mischief has been drawn to the attention of the draftsman he will consider whether any concomitant mischiefs should be dealt with as a necessary corollary."

49. The drafter may pursue a main statutory object whilst at the same time taking account of other important relevant considerations, such as the requirements of fairness and legal certainty. As was stated pithily by the US Supreme Court in *Rodriguez v United States* (1987) 480 US 522, 525–526:

> "no legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." (Emphasis in original.)

50. To similar effect, in *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] UKSC 3; [2014] 1 WLR 324, at paras 170–171, Lord Neuberger of Abbotsbury and Lord Mance (speaking with reference to EU legislation, but making a general point) said:

> "It is a common place in legislation that objectives may not be fully achievable or achieved. Compromises or concessions have to be made if legislators are to achieve the enactment of particular provisions … When reading or interpreting legislation, it can never therefore be assumed that particular objectives have been achieved to the fullest possible degree. Limitations on the scope or application of a legislative measure may have been necessary to achieve agreement. There may also have been good reasons for limitations, of which courts are unaware or are not the best judge. Where the legislature has agreed a clearly expressed measure, reflecting the legislators' choices and compromises in order to achieve agreement, it is not for courts to rewrite the legislation, to extend or 'improve' it in respects which the legislator clearly did not intend."

51. In the present case, the relevant purpose of section 15(6)(a), in so far as the explanation to be given was required to explain which limb of section 15(1) the Secretary of State thought applied, was plainly to inform an employer in receipt of a penalty notice why it was being imposed and also, in consequence, to enable them to be able to make an informed decision whether to appeal on that point.

(e) R v Soneji

52. On the basis that section 15(6)(a) is to be given the interpretation I have set out, contrary to the view of the courts below, Mr Malik submits that HHJ Gargan was still right to dismiss the appellant's appeal in the county court. Mr Malik relies on the approach to breach of procedural requirements set out in statute explained in *R v Soneji*. On this submission, although section 15(6)(a) imposed an obligation on the Secretary of State to specify the limb of section 15(1) relied upon as the basis for imposing the penalty charge,

which was breached, by the time of the hearing in the county court the Secretary of State had specified which limb was being relied upon. So, it is said, the appellant has not really suffered any detriment, and in these circumstances Parliament cannot be taken to have intended that the CPN should be treated as invalid, with the result that the appellant's appeal under section 17 of the 2006 Act should be dismissed.

53. The significance of *R v Soneji* is that it introduced a new framework for addressing the question of what effect breach of a procedural requirement set out in statute would have on subsequent proceedings. The previous division between treating such a requirement as mandatory (any breach of which would invalidate that procedural step, and any proceedings which followed it) or as directory (any breach of which would not invalidate the procedural step or any proceedings which followed it), with no possibility of any middle position, was revisited so as to introduce a middle position as a possible interpretive option. The relevant approach is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid; and in determining the question of purpose, regard must be had to the language of the relevant provision and the scope and object of the whole statute (see the joint judgment of McHugh, Gummow, Kirby and Hayne JJ in the High Court of Australia in *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355, para 93; endorsed in *R v Soneji*, para 21).

54. The recognition in *R v Soneji* of this new framework for analysis does not mean that the effect of procedural rules in every statutory context turns on detailed examination of the consequences arising from the breach of the particular rule. Nor does it mean that a test of substantial compliance applies in every case in order to determine the validity of some procedural step. Examination of the purpose served by a particular statutory procedural rule, such as a rule requiring notice to be given of some matter, may indicate that Parliament intended it should operate strictly, so that any failure to comply with it invalidates the notice and that procedural step.

55. In my view, in the context of the regime in the 2006 Act, section 15(6)(a) sets out a clear condition for the validity of a penalty notice so far as is relevant in this case, namely that the Secretary of State has to specify which limb of section 15(1) is being relied on as the basis for the imposition of the penalty set out in the notice. The interpretive guidance from the constitutional context as set out above points strongly in this direction, as does consideration of the statutory regime as a whole and the way it is supposed to operate in practice. An employer who receives a penalty notice is entitled to know from the notice which limb of section 15(1) is being invoked to justify imposing the penalty. The importance of fairness in this context also points to that result. An employer should not have to appeal in order to find out which limb of section 15(1) is in fact being relied on by the Secretary of State, which is what happened here. Further, a penalty notice has effect if there are no later proceedings (ie if there is no appeal), and Parliament's intention as to the operation of section 15(6)(a) has to be tested in the light of that possibility.

56. On the other side of the equation, looking at matters from the perspective of the Secretary of State, it is difficult to see that there is any good reason which could lead to the inference that Parliament intended that breach of the requirement in section 15(6)(a) as regards identifying the particular limb of section 15(1) relied on should not have the simple result that the penalty notice is invalid. Such an interpretation does not impose an unreasonable burden on the Secretary of State, since she holds all the relevant records regarding the immigration status of individuals and in order to exercise her power under section 15(2) she necessarily has to go through the process of identifying the limb of section 15(1) she relies on. Where the Secretary of State is empowered to impose a penal sanction on a person, it cannot be inferred that Parliament intended that a basic error regarding the applicability of section 15(1) might have no real consequence in relation to the validity of the penal notice. That point is reinforced by the fact that, unlike in *R v Soneji*, if it appears that an error has been made, the Secretary of State can issue a new penalty notice which does comply with the statutory requirement.

57. *JN (Cameroon)* does not assist the Secretary of State. It concerned whether the Asylum and Immigration Tribunal had jurisdiction to entertain an immigration appeal in a deportation case, where the notice of a decision to make a deportation order failed to specify, as required by regulations, the country to which the recipient was to be removed. The statutory context was very different. The operative decision for deportation is not the notice itself, but the underlying decision to deport, and it was against that decision that the appeal lay. The deficiency in the notice had no effect on the jurisdiction of the tribunal (para 21), nor on the validity of the underlying decision to deport (para 22). Even if the procedural defect in the notice could have an effect on the validity of the appeal, the middle-way approach in *R v Soneji* was applicable; "the proposed destination was clear and … the appellant's ability to present his appeal was not impaired in any way by the failure to state the destination in the notice", so that "non-compliance with the requirement has plainly not had any material adverse effect on fulfilment of the purpose for which the requirement is imposed" (para 27).

58. By contrast, in the present context the middle-way approach in *R v Soneji* is not applicable. Section 15(6)(a) sets out a clear requirement so far as concerns specification of the limb under section 15(1) and failure to comply with that requirement rendered the CPN invalid. Fulfilment of the relevant purpose of section 15(6)(a) as set out at para 51 above would be unacceptably undermined if the CPN were given effect notwithstanding the failure to comply with that requirement.

Conclusion

59. For the reasons given above, I would allow the appeal.