***Para 5.1** In *Lane* [2018] UKSC 36, referred to in the update to para 4.57, where the Supreme Court held that the phrase 'reasonable cause to suspect' in the Terrorism Act 2000, s 17(1) meant an objectively assessed reasonable cause for suspicion (ie negligence), Lord Hughes SCJ, giving the sole judgment with which the other members of the Supreme Court agreed, said that it would be an error to suppose that the form of offence-creating words adopted by Parliament in s 17(1) resulted in an offence of strict liability. He continued (at [24]):

> 'It is certainly true that because objectively-assessed reasonable cause for suspicion is sufficient, an accused can commit this offence without knowledge or actual suspicion that the money might be used for terrorist purposes. But the accused's state of mind is not, as it is in offences which are truly of strict liability, irrelevant.'

***Para 5.7** In *Loake v Crown Prosecution Service* [2017] EWHC (Admin) 2855 (dealt within the update to para 15.40), the Divisional Court held that *DPP v H* [1997] 1 WLR 1406, DC, should not be followed on the point referred to in the second paragraph because it was founded on the incorrect proposition that the defence of insanity is based on the absence of *mens rea*. The defence of insanity, the Court held in *Loake*, applies to all criminal offences.

***Para 5.14** In *Lane* (above), Lord Hughes SCJ, having referred to Lord Reid's 'magisterial statement of principle' (see n 41 to the text) in *Sweet v Parsley* [1970] AC 132, HL, set out in para 5.14, said (at [9]):

> 'Whilst the principle is not in doubt, and is of great importance in the approach to the construction of criminal statutes, it remains a principle of statutory construction. Its importance lies in ensuring that a need for *mens rea* is not inadvertently, silently, or ambiguously removed from the ingredients of a statutory offence. But it is not a power in the court to substitute for the plain words used by Parliament a different provision, on the grounds that it would, if itself drafting the definition of the offence, have done so differently by providing for an element, or a greater element, of *mens rea*. The principle of Parliamentary sovereignty demands no less. Lord Reid was at pains to observe that the presumption applies where the statute is silent as to *mens rea*, and that the first duty of the court is to consider the words of the statute.'

Having referred (at [12]) to 'the truism that the presumption [that *mens rea* is required] is a principle of statutory construction, which must give way to either the plain meaning of the words, or to other relevant pointers to meaning which clearly demonstrate what was intended', Lord Hughes continued: 'It follows that the Court of Appeal in the present case did not fall into the error suggested, of wrongly starting with the words of the Act. On the contrary, that is the inevitable

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first port of call for any issue of construction, as Lord Reid's statement of the principle in *Sweet v Parsley* expressly stated.'

***Paras 5.22, 5.23, 5.24, 5.25, 5.26, 5.36, 5.37, 5.40 and 5.41** The propositions stated by Lord Scarman, giving the Privy Council's opinion in *Gammon (Hong Kong) Ltd v A-G of Hong Kong* [1985] AC 1 at 14, set out in para 5.22 were applied by the Divisional Court in *Hounslow London Borough Council v Aslim* [2018] EWHC 733 (Admin).

In *Hounslow London Borough Council v Aslim*, D operated a hair studio and held a licence under the London Local Authorities Act 1991 from the local authority which authorised use of the premises as an 'establishment of special treatment', which included body piercing. In breach of the standard terms and conditions of the licence, D performed a belly button piercing on a 14-year-old girl (V) without getting the written parental consent required by the licence where the person in question was under 16. V had told D that she was 16 and produced a 16-plus photo card. In addition, V had arranged for a friend to say he was her father over the phone and that she was 16, and the friend confirmed this when D phoned to confirm V's age. In respect of the above facts, D was prosecuted by the local authority for failing to act in accordance with the terms and conditions of his licence, contrary to s 14(2) of the 1991 Act. A magistrates' court concluded that, as V had produced identification, and D had double checked with the person who - she said - was her father, the offence had not been proved.

On an appeal to the Divisional Court by the local authority, the question was whether the offence charged - failure to act in accordance with the terms and conditions of the licence by not obtaining written consent from the child's parent or guardian to body piercing - was a strict liability offence as to the circumstance that V was under 16.

Allowing the local authority's appeal, the Divisional Court held that the offence under s 14(2) was one of strict liability in this respect.

Having referred to Lord Scarman's propositions in *Gammon*, Holgate J (with whom the other judge agreed) continued (at [22]-[28]):

> 'As to the second principle, the offence in question was not "truly criminal" in character. The requirement that body piercing should not be carried out on children under 16 without written parental consent is a prohibition of a regulatory nature accompanied by a penalty (*Sherras v De Rutzen* [1895] 1 QBD 918 , 921; *Sweet v Parsley* [1970] 1 AC 132, 149). The offence can only be dealt with summarily. It cannot be punished by imprisonment

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and it is not a type of offence which will attract stigma to any substantial degree.

As to the fourth principle, both s 14(2) and the condition which is the subject of the alleged offence raise matters of social concern, in that they are directed at protecting public safety and health and the interests of children and young persons.

As to the fifth principle, it is undoubtedly the case that the imposition of strict liability on compliance with the Council's standard terms and conditions on age restrictions and written parental consent would promote the objects of the statutory regime by encouraging greater vigilance by those responsible for establishments providing "special treatments". That was the position in the analogous case of *Harrow LBC v Shah* [2000] 1 WLR 83, which was concerned with a prohibition on the sale of National Lottery tickets to persons under 16. The argument is all the more compelling in the present case given the health and safety issues involved.

The third principle raises the question whether the presumption in favour of requiring *mens rea* to be established is displaced clearly or by necessary implication by the effect of the Act. In *B (a minor) v Director of Public Prosecutions* [2000] 2 AC 428 at p 464A, Lord Nicholls stated:

"'Necessary implication' connotes an implication which is compellingly clear. Such an implication may be found in the language used, the nature of the offence, the mischief sought to be prevented and any other circumstances which may assist in determining what intention is properly to be attributed to Parliament when creating the offence."

There is nothing in the Act, particularly in s 14(2), to indicate that a licence holder's reasonably held belief that he is complying with the terms of the licence may afford a defence. Such an approach would seriously weaken the regulatory efficacy of this scheme. That applies *a fortiori* to the protection of young persons and children by the regulations which s 10 [of the 1991 Act] allows local authorities to make, such as the standard terms and conditions in this case.

Accordingly, … for the reasons already set out above, I conclude that the presumption in favour of applying a *mens rea* requirement in relation to the age restriction is displaced by necessary implication. The justification for that implication is "compellingly clear".

For these reasons, I would answer [the question] in the negative. Whether or not the respondent [D] took all reasonable steps to ensure that the

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client was aged over 16 is irrelevant to whether or not he was guilty of the [offence in question] under s 14(2)…. On the issue of age, it was sufficient for the prosecution to prove that the client was in fact aged under 16.'

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