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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL BY WAY OF CASE STATED UNDER THE MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

BETWEEN:

SECURITY INDUSTRY AUTHORITY

Complainant/Appellant

and

JAMIE BRYSON

Defendant/Respondent

_____

Mr Tony McGleenan KC with Mr Andrew J Brownlie (instructed by the Crown Solicitor's Office) for the Complainant/Appellant
Jamie Bryson as Personal Litigant for the Defendant/ Respondent

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Before: Treacy LJ and Horner LJ

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TREACY LJ (*delivering the judgment of the court)*

Introduction

[1] The District Judge (Magistrates' Court) ("the District Judge") has stated the following questions for the opinion of the Court of Appeal:

> "(1) Was I correct in law, at the direction stage, to conclude that the delegation to the Chief Executive Officer of the section 19(2) function was invalid and that such invalidity, if any, was not corrected by Board ratification? [the first question]
>
> (2) Was I correct in law, at the direction stage, to conclude that the delegation of the section 19 function to the Assistant Director of Compliance and Investigations was no longer valid when Compliance and Investigations

became Partnerships and Investigations? [the second question]

(3) Did I err in law, at the direction stage, in concluding that the discharge of the functions of the Security Industry Authority required, as a condition precedent, that a delegation provided prior to the commencement of the 2001 Act provisions in Northern Ireland be renewed or repeated? [the third question]

(4) Was I correct in law, at the direction stage, to conclude that the offence in section 22 of the Act of providing false information could not be established where the false information was provided to a person employed by the Authority rather than to the Authority itself?" [the fourth question]

Factual background

[2] The Private Security Industry Act 2001 (the "2001 Act") came into effect in England and Wales in 2003. The Security Industry Authority ("the Authority") was established by section 1 of the 2001 Act and has a series of functions which are set out in section 1(2). The 2001 Act was subsequently extended to Scotland in 2006 before being extended to Northern Ireland in 2009.

[3] On 5 June 2018 an Investigations Officer employed by the Authority sent the defendant a letter requiring him under section 19(2) of the 2001 Act, as a regulated person or a person appearing to be regulated, to provide information and documentation relating to JJ Security Services Limited for a particular period of time. The defendant responded stating that JJ Security Services Ltd had never traded.

[4] On 5 December 2018 the Authority issued a summons against the defendant alleging that he committed the offence of making to the Authority a statement that he knew to be false in a material particular or, alternatively, recklessly making a statement which was false in a material particular contrary to section 22(1)(a) and (b) of the 2001 Act, namely that JJ Security Services Ltd had never traded.

[5] The summons was initially before Newtownards Magistrates' Court but following a judicial review of an order of the District Judge in 2021 the summons was transferred to Downpatrick Magistrates' Court.

[6] On 10 May 2023 the District Judge sitting in Downpatrick refused the defendant's application for a direction of no case to answer. The defendant asked the court to state a case for the opinion of the Court of Appeal. The District Judge refused to do so and instead permitted the defendant to re-open his application for a direction of no case to answer.

[7] After allowing the defendant to renew his application for a direction of no case to answer and considering further submissions, on 3 August 2023 the District Judge dismissed the summons on the grounds that, at the direction stage, she was of the opinion that there was a 'doubt':

- Whether the Chair had the authority to delegate power on the behalf of the Authority to the Chief Executive Officer;

- Whether the Board of the Authority had power to ratify that decision;

- Whether the delegation, if it was valid, survived the restructuring of the Authority in 2013;

- Whether the delegation was automatically valid in Northern Ireland without further enactments after the 2001 Act was brought into effect in Northern Ireland in 2009, and;

- Whether the section 22(1)(a) or (b) offences could be made out on the basis that they require a statement to the Authority and the defendant argued that the statement under scrutiny was made to a person authorised by the Authority not the Authority.

[8] Following the dismissal of the summons the Authority requested the District Judge to state a case. The District Judge acceded to that request and stated a case for the opinion of the Court of Appeal on four questions which we address below.

The First Question

Was I correct in law, at the direction stage, to conclude that the delegation to the Chief Executive Officer of the section 19(2) function was invalid and that such invalidity, if any, was not corrected by Board ratification?

[9] Section 19(2) of the 2001 Act provides:

> "(2) A person authorised in writing for the purpose by the Authority may require any person appearing to him to be a regulated person to produce to him any documents or other information relating to any matter connected with—
>
> (a) any licensable conduct which has been or may be engaged in by the person so appearing;
> (b) the provision by the person so appearing of any security industry services;

(c) any matters in respect of which conditions are imposed on the person so appearing by virtue of a licence or of an approval granted in accordance with arrangements under section 15."

[10] The District Judge heard evidence that 17 years previously on 9 March 2007 an issue had been identified with the previous delegation of the section 19 powers and the Chair was asked to agree to provide the delegation in advance of the Board meeting with an assurance that a brief paper would be prepared to obtain Board endorsement. The Chair provided the requested delegation. The court heard evidence that the Chair provided the delegation on behalf of the Authority to resolve this issue and further that her actions were then endorsed by the Board.

[11] The defendant asserted that the Chair did not have the authority to delegate the section 19(b) power as paragraph 9 of Schedule 1 to the 2001 Act provided only that the "Authority may, to such an extent as it may determine, delegate any of its functions to any committee of the Authority or to any employee of the Authority." He argued that the "Authority" meant all the members acting collectively. In his written argument before us the defendant identified the key issue under the 'delegation' point as being his contention that the Chair of the Authority had no power to do so. He asserted that the Chair could neither unilaterally delegate, nor be delegated the power to forward-delegate by the Authority. This is so, he contended, because there is no power within Schedule 1 paragraph 9 to delegate to anyone other than an employee or a committee. The defendant submitted that the Chair was neither. Nor could there be a forward delegation, because the power to forward delegate (or sub-delegate) can only be within the scope of the delegation power itself. Therefore, whether the Chair acted alone, or purported to act "on behalf of the Authority" does not matter in terms of legality because, on either basis, she acted ultra vires. The defendant said that inserting "on behalf of the Authority" was a "conjuring trick" – whom the Chair purports to act on behalf of is irrelevant; it is who makes the decision which is at issue. He submits that it is clear the decision was made by the Chair, regardless of whether she purported to act on behalf of the Authority or not. The defendant therefore argues that there could be no valid delegation of the decision-making power to the Chair, in any circumstance. Relatedly he also contends that the Board is not the Authority and, in any event, neither the Authority nor the Board, could ratify a decision made by the Chair. This is so, he said, because if there was no power to delegate to the Chair, then there is no power to ratify a decision that the Chair could never have lawfully made. In support of this latter proposition the defendant referred the court to *Barnard v National Dock Labour Board* [1953] 2 QB 18 where it was held that the local board had no power, express or implied, to delegate its quasi-judicial disciplinary functions to the port manager or to ratify his purported exercise of those functions. The defendant relied on the following passage from the judgment of Lord Denning at page 40:

> "If the Board have no power to delegate their functions to the port manager, they can have no power to ratify what

> he has done. The effect of ratification is to make it equal to a prior command; but just as a prior command, in the shape of a delegation, would be useless, so also is a ratification."

[12] In light of the evidence summarized at [11] above we agree that the Chair did have authority to delegate the power on behalf of the Authority. Further, even if she did not, we consider that the subsequent endorsement of that decision by the Board remedies any defect in the circumstances of this case. The appellant referred us to *R v Monopolies and Mergers Commission, ex parte Argyll Group PLC* [1986] 1 WLR 763 where the Court of Appeal, having held that the chairman could not have taken the decision himself on behalf of the commission, refused to set aside the decision on the basis that good public administration is concerned with substance rather than form and the court had little doubt that the commission would have reached the same decision. The present case is even stronger since there is evidence that the decision of the Chair was in fact subsequently endorsed by the Board.

[13] Accordingly, the District Judge was incorrect in law to conclude that the delegation to the Chief Executive Officer of the section 19(2) function was invalid.

The second question

Was I correct in law, at the direction stage, to conclude that the delegation of the section 19 function to the Assistant Director of Compliance and Investigations was no longer valid when Compliance and Investigations became Partnerships and Investigations?

[14] The District Judge heard evidence that the authority to grant individuals the power of entry and inspection was delegated to, inter alia, the Assistant Director of Compliance and Investigations and in 2013 Compliance and Investigations became Partnerships and Interventions. The prosecution evidence was that the department in question had simply been renamed. It was not an amalgamation of other departments.

[15] The appellant referred us to *R v Law Society, ex parte Curtin* The Times 3 December 1993, which stated:

> "the court must credit Parliament with the intent of authorizing a comprehensive and effective system of delegation, which best serves the regulatory system under the Solicitors Act 1974 and the public interest. That objective is achieved by adopting a construction of section 79(1)(c) which allows delegation to the holder of an office."

Section 79(1)(c) of the Solicitors Act 1974 permits delegation to "an individual (whether or not a member of the Society's staff)" which the appellant contends is

directly analogous to paragraph 9 of Schedule 1 to the 2001 Act which permits delegation to, inter alia, an employee:

> "**Delegation to committees and staff**
>
> 9(1) The Authority may, to such extent as it may determine, delegate any of its functions to any committee of the Authority or to any employee of the Authority.
>
> (2) Any such committee may, to such extent as it may determine, delegate any function conferred on it to any of its sub-committees or to any employee of the Authority.
>
> (3) Any sub-committee of the Authority may, to such extent as the sub-committee may determine, delegate any functions conferred on the sub-committee to any employee of the Authority."

The appellant submits that this power of delegation is to be contrasted with some legislative provisions which expressly state that the delegation can *only* be to an office holder, pointing to the example of section 101 of the Local Government Act 1972 which empowers local authorities to "arrange for the discharge of any of their functions … by a committee, a sub-committee or an officer."

[16] We agree that the delegation of the section 19 powers to the holder of the office of Assistant Director of Compliance and Investigations was effective. Following the restructuring of the Authority in 2013 this office was simply renamed Partnerships and Interventions and the delegation therefore remained valid.

The third question

Did I err in law, at the direction stage, in concluding that the discharge of the functions of the Security Industry Authority required, as a condition precedent, that a delegation provided prior to the commencement of the 2001 Act provisions in Northern Ireland be renewed or repeated?

[17] The delegation of the section 19 powers was provided on 12 March 2007. This was before the 2001 Act came into effect in Northern Ireland. The defendant asserted that the delegation did not have effect in Northern Ireland when the territorial scope of the 2001 Act was extended to Northern Ireland. The District Judge dismissed the complaint on the basis that, at the direction stage, she had a *doubt* as to whether the delegation was automatically valid in Northern Ireland without further enactments after the 2001 Act was brought into power in Northern Ireland. She was wrong in law to have done so.

[18] The delegation provided by the Authority is clear in its terms and it delegated the authority to grant individuals the powers of entry and inspection as defined

within section 19 of the 2001 Act. This was not subject to an express limitation as to jurisdiction at the time it was granted.

[19] The extension of the 2001 Act to Northern Ireland included the extension of the remit of the Authority to include Northern Ireland. The purpose was not to set up a new body but rather to extend the territorial remit of an existing body. In a paper prepared for the Northern Ireland Assembly it is stated:

> "The remit of the Security Industry Authority (SIA) is to be extended to Northern Ireland in 2009, creating a single regulatory scheme for the private security industry throughout the United Kingdom. The proposal to extend the remit of the SIA to Northern Ireland was put out for public consultation by the Northern Ireland Office in August 2006. The results showed an overwhelming desire within the industry for regulation and that this should be in line with best practice in Great Britain."

[20] The relevant provisions of the 2001 Act brought into effect included that there shall be a Security Industry Authority (section 1(1)), appointment of members of the Authority and a chairman (Schedule 1, paragraph 1) and the establishment of committees (schedule 1, paragraph 8). These steps were all undertaken before the 2001 Act came into effect in Northern Ireland in 2009. The Authority was already established, and we agree with the appellant that it is clear that Parliament intended that the steps that had already been undertaken would have effect in Northern Ireland after the extension of the 2001 Act. The Act did not require the retaking of these steps *de novo* simply because of the extension of the territorial remit. As the appellant pointed out this is an entirely orthodox approach to the territorial extension of a body of this nature. By way of example the appellant pointed to the extension of the National Crime Agency functions to Northern Ireland pursuant to the Crime and Courts Act 2013 (National Crime Agency and Proceeds of Crime) (Northern Ireland) Order 2015.

[21] The appellant pointed to the fact that there are regional variations within the provisions of the 2001 Act, for example section 3 is different in England and Wales from Scotland and Northern Ireland and the designated activities are different in each region (hence the need for the Secretary of State for Northern Ireland to designate activities). These variations do not impact on the delegation of the section 19 powers. The variations relate to the nature of the regulatory regime and not the body entrusted with the regulation of the industry. The differential extension of powers to the different jurisdictions of the United Kingdom is simply a feature of the devolution settlements and does not mandate the need for the retaking of all internal delegation processes when territorial extension is authorised by Parliament.

[22] The defendant argued before the District Judge that the fact that transitional provisions were brought into effect regarding the recognition of licences granted

under previous regulatory provisions, supported his assertion that for the delegation of the section 19 power to have effect in Northern Ireland there should have been appropriate transitional provisions. However, we agree with the appellant that the recognition of licences previously granted is an entirely different issue from extending the remit of a body already established under the legislation. It is common practice for transitional provisions to recognise existing licences when regulatory systems are being changed (see for example The Houses in Multiple Occupation (Commencement and Transitional Provisions) Order (NI) 2019 which provided that properties registered under the previous regime would be deemed to be licensed under the new regime).

[23] We therefore agree that the District Judge was incorrect to conclude that there was a doubt as to whether the delegation had effect in Northern Ireland.

The fourth question

Was I correct in law, at the direction stage, to conclude that the offence in section 22 of the Act of providing false information could not be established where the false information was provided to a person employed by the Authority rather than to the Authority itself?

[24] On 5 June 2018 an Investigations Officer employed by the Authority sent the defendant a letter requiring him under section 19(2) of the 2001 Act, as a regulated person or a person appearing to be regulated, to provide information and documentation relating to JJ Security Services Limited for a particular period of time. The defendant responded to this request, and it was the prosecution case that his response was false in a material particular, and the defendant knew this to be the case, or alternatively, he recklessly made the statement which was false in a material particular contrary to section 22 of the 2001 Act.

[25] Section 22 provides as follows:

> "(5) A person is guilty of an offence if for any purposes connected with the carrying out by the Authority of any of its functions under this Act—
>
> (a) he makes any statement to the Authority which he knows to be false in a material particular; or
>
> (b) he recklessly makes any statement to the Authority which is false in a material particular.
>
> (6) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both."

[26] The District Judge held that, at the direction stage, she had a doubt as to whether the section 22(1)(a) or (b) offences could be made out. This was on the basis that the offence in section 22 of the Act of providing false information could not be established where the false information was provided to a person employed by the Authority, rather than to the Authority itself.

[27] We agree with the appellant's submission that this interpretation is so narrow that the offence could only be committed if the statement was made to members of the board who make up the Authority. To interpret section 22 in this manner, given the extent to which the functions of the Authority are delegated, would mean that this offence would rarely if ever be committed as the persons executing many of the functions are not members of the board of the Authority. Such an interpretation would, as the appellant contended, run contrary to the purpose of the statutory scheme and impose a requirement that is likely to be inoperable across the jurisdictions now covered by the legislation.

[28] Section 1(2) of the 2001 Act sets out the wide-ranging functions of the Authority which include, 'monitoring the activities and effectiveness' of those carrying out regulated business. These are the type of functions employees of the Authority would be expected to discharge in the course of their employment, rather than being limited only to board members or senior executives.

[29] By way of example the appellant pointed to the fact that it is the employees of the Authority who, on behalf of the Authority and in connection with the functions of the Authority, carry out the inspections. The appellant drew to our attention the case of *R (Securiplan PLC and Others) v Security Industry Authority* [2008] EWHC 1762 (Admin). In this case the Divisional Court (in the course of considering and affirming the power of the Security Industry Authority to prosecute offences) stated, without criticism, that in that case on "23 and 24 March the SIA carried out inspection visits." It was not the members of the board of the Authority who carried out these inspections, it was the employees. The Divisional Court made no adverse comment on the fact that the inspections were not carried out by the board members of the authority. We are in full agreement with the appellant that the construction the defendant, Mr Bryson, contends for would hollow out the efficacy of the authority as a regulatory body.

[30] We hold that a statement to an employee of the Authority who is acting in the course of his or her employment and for any purpose connected with the carrying out by the Authority of any of its functions under the 2001 Act, is a statement made to the Authority. Accordingly, the District Judge erred in law in holding that an offence under section 22 of the 2021 Act could not be established where the false information was provided to a person employed by the Authority, rather than to the Authority itself.

Test to be applied at the direction stage

[31] At any point after the close of the prosecution case the defence is entitled to make a submission to the court that there is no case to answer. The test for such an application was set out by Lane LJ in *R v Galbraith* [1981] 2 All ER 1060, namely:

> "How then should the judge approach a submission of `no case'? (1) If there is *no evidence* that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is *some evidence,* but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred."

[32] In *Chief Constable of the PSNI v LO* [2006] NICA 3 Kerr LCJ, at paragraph 14, set out the approach that a District Judge, sitting as the tribunal of fact, should adopt:

> "The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in *Galbraith*. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution case, 'do I have a reasonable doubt?' The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was

> so weak or so discredited that it could not conceivably support a guilty verdict." [Emphasis added]

[33] We agree with Dr McGleenan that in addressing the application for a direction of no case to answer, the District Judge should have directed herself to consider whether she was convinced that there were no circumstances in which she could properly convict the defendant. We further agree ,that the District Judge initially refused the application for a direction and was correct to do so. The later reversal of that decision is unsound as a matter of principle and was based on an acceptance of an incorrect legal analysis.

Conclusion

[34] The answer to the first question is 'No'; the answer to the second question is 'No'; the answer to the third question is 'Yes' and the answer to the fourth question is 'No.' We will hear the parties as to any further orders that may be required.

Postscript
Having received oral submission from the parties we have concluded that the appropriate course is to exercise our powers under section 38(1)(f) to remit the case for rehearing before a different District Judge.