

Judicial Communications Office

10 April 2024

COURT DELIVERS JUDGMENT IN SECURITY INDUSTRY AUTHORITY v BRYSON

Summary of Judgment

The Court of Appeal¹ today found that a District Judge (Magistrates' Court) was incorrect in law in reaching her conclusions in the case of the Security Industry Authority v Jamie Bryson.

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.

On 5 June 2018, an Investigations Officer employed by the Authority sent Jamie Bryson ("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 Ltd for a particular period of time. The defendant replied stating that JJ Security Services Ltd had never traded. 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, namely that JJ Security Services Ltd had never traded.

On 10 May 2023, a District Judge 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. 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" about the exercise of some of the Authority's powers. The District Judge stated four questions for the opinion of the Court of Appeal.

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?

Section 19(2) of the 2001 Act provides that 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 certain documents or other information. On 9 March 2007 an issue had been identified with the previous delegation of the section 19 powers and the Chair of the Authority was asked to agree to provide the delegation on behalf of the Authority to resolve this issue. Her actions were then endorsed by the Board.

The defendant asserted that the Chair did not have the authority to delegate the section 19 power as paragraph 9 of Schedule 1 to the 2001 Act provided only that the "Authority may, to such an

¹ The panel was Treacy LJ and Horner LJ. Treacy LJ delivered the judgment of the court.

Judicial Communications Office

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. The defendant also contended that, 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*. He argued that there could be no valid delegation of the decision-making power to the Chair, in any circumstance, and that neither the Authority nor the Board, could ratify a decision made by the Chair.

The court, however, referred to the issue that had been identified on 9 March 2007 and concluded that the Chair did have authority to delegate the power on behalf of the Authority. Further, even if she did not, it considered that the subsequent endorsement of that decision by the Board remedied any defect in the circumstances of this case. It referred to case law where the Court of Appeal in England and Wales, having held that a chairman could not have taken the decision himself on behalf of a 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 court said this case was even stronger since there was evidence that the decision of the Chair was in fact subsequently endorsed by the Board.

The court determined that 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?

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. The appellant submitted that the power in paragraph 9 of Schedule 1 to the 2001 Act did not expressly state that the delegation can *only* be to a specific office.

The court agreed 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?

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

Judicial Communications Office

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.

The court said the District Judge was wrong in law to have done so. It said 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.

The court noted that 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. The court said the steps to establish the Authority had been undertaken before the 2001 Act came into effect in Northern Ireland in 2009. It agreed with the appellant that it was 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 court said the 2001 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."

The appellant also pointed to the fact that there are regional variations within the provisions of the 2001 Act and the designated activities are different in each region (hence the need for the Secretary of State for Northern Ireland to designate activities). The variations relate to the nature of the regulatory regime and not the Authority which is entrusted with the regulation of the industry. The appellant stated that 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.

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. The court, however, agreed 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.

The court said 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?

The prosecution case was that the defendant's response to the request from the Investigations Officer to provide information and documentation relating to JJ Security Services Ltd 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. Section 22 of the 2001 Act provides that it is an offence to provide false information. The District Judge held that, at the direction stage, she had a doubt as to whether the section 22 offences could

Judicial Communications Office

be made out on the basis that the offence could not be established where the false information was provided to a person employed by the Authority, rather than to the Authority itself.

The court agreed that this interpretation was so narrow that the offence could only be committed if the statement was made to members of the board who make up the Authority. It said that 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.

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. It cited a case from E&W where 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.

The court was in full agreement with the appellant that the construction the defendant contended for would hollow out the efficacy of the authority as a regulatory body. It held 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

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. In *Chief Constable of the PSNI v LO* [2006] NICA 3, the Court of Appeal set out the approach that a District Judge, sitting as the tribunal of fact, should adopt when considering this question: “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.”

The court said 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. Further, the District Judge initially refused the application for a direction and was correct to do so. The later reversal of that decision was unsound as a matter of principle and was based on an acceptance of an incorrect legal analysis.

Conclusion

Judicial Communications Office

The court said 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.'

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Lady Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: LCJOffice@judiciaryni.uk