



28 July 2010

## PRESS SUMMARY

### **R (Respondent) v Rollins (Appellant) [2010] UKSC 39**

*On appeal from the Court of Appeal [2009] EWCA Crim 1941*

**JUSTICES:** Lord Saville, Lord Rodger, Lord Brown, Lord Judge, Lord Kerr, Lord Clarke, Sir John Dyson SCJ

### **BACKGROUND TO THE APPEAL**

The Financial Services Authority ('the FSA') had brought a criminal prosecution against the Appellant, Mr Neil Rollins, for (i) offences of insider dealing contrary to section 52 of the Criminal Justice Act 1993 and (ii) offences of money laundering contrary to sections 327 and 328 of the Proceeds of Crime Act 2002 ('POCA'). The allegations under (i) related to the sale of shares in a company by which he was employed. The allegations under (ii) related to the transfer of part of the proceeds of the sale from his bank account to a bank account in his father's name.

The Appellant contended that the FSA's powers to prosecute criminal offences were limited to the offences referred to in sections 401 and 402 of the Financial Services and Markets Act 2000 ('FSMA'). He conceded that the FSA had power to prosecute the insider dealing offences under section 402 of FSMA. However, he challenged the FSA's power to prosecute the money laundering offences, since this had not been provided for by s. 402. He argued that FSMA set out a complete code within which the FSA had to operate and that its only powers to prosecute were those referred to in sections 401 and 402.

The Crown Court and the Court of Appeal rejected the Appellant's arguments. The Appellant appealed to the Supreme Court.

### **JUDGMENT**

*The Supreme Court unanimously dismisses the appeal. It holds that the Financial Services Authority does have the power to prosecute the money laundering offences. Sir John Dyson SCJ gave judgment on behalf of the Court.*

### **REASONS FOR THE JUDGMENT**

- The Financial Services Authority, like other corporate bodies, was entitled to bring a prosecution for any offence subject to statutory restrictions and conditions and provided that it was permitted to do so by its memorandum and articles of association [**paragraphs 11, 14**].
- Section 401 (2) of Financial Services and Markets Act 2000 provided that offences created by FSMA itself or any subordinate legislation made under the Act could be instituted only by the FSA or the Secretary of State or by the consent of the Director of Public Prosecutions. If section 401 (2) had the effect of conferring the power to prosecute such offences on the FSA, that would support the argument that its power to prosecute was limited to those offences set out in the Act. However, the true effect of section 401 (2) was to *limit* the power to prosecute

to those listed in the section – to the FSA, the Secretary of State and the Director of Public Prosecutions and not to limit which offences could be prosecuted **[paragraph 15]**.

- There was no policy reason which could have led Parliament to deprive the FSA of the power it previously enjoyed to bring prosecutions for offences other than those listed in sections 401 and 402. The policy considerations pointed the other way. One of the objectives of the FSA as defined by FSMA was to reduce financial crime. It would therefore have been perverse for Parliament to deprive the FSA of its previous power to prosecute financial offences. Similarly the Appellant’s argument would have the effect of requiring multiple prosecutions in some cases and prevent the FSA from amending charges in other cases where the sought amendment concerned an offence which was not contained within section 401 or 402. **[paragraphs 17, 18]**.
- The Appellant had submitted that Parliament must have intended to limit the FSA’s power to prosecute offences not created by FSMA itself to those listed in s. 402, as there was no other explanation for their inclusion in the statute. This was not correct – there were rational reasons **[paragraphs 23, 24]**.
- FSMA cannot have set out a complete code within which the FSA to operate. For example, the FSA had powers under other statutes which were not derived from FSMA **[paragraph 26]**.

#### **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**