

JUSTICE PRESS RELEASE

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'Our system of justice is innocent until proven guilty': UK Supreme Court rules against government on compensation for miscarriages of justice.

By a majority of 5-4, the UK Supreme Court this morning rejected the government's arguments that only people who could prove their innocence would be entitled to compensation for miscarriages of justice.

Instead, the Supreme Court ruled that the right to statutory compensation under the Criminal Justice Act 1988 includes cases where the evidence against a defendant is so undermined by a new or newly discovered fact 'that no conviction could possibly be based upon it'. The President of the Court, Lord Phillips, said the government's more restrictive approach would otherwise 'deprive some defendants who are in fact innocent and who succeed in having their convictions quashed ... from obtaining compensation' (para 50). The case involved three appeals, two of which will now be eligible for compensation under the Supreme Court's ruling.

Baroness Hale said:

Innocence as such is not a concept known to our criminal justice system. We distinguish between the guilty and the not guilty. A person is only guilty if the state can prove his guilt beyond reasonable doubt. If it can be conclusively shown that the state was not entitled to punish a person, it seems to me that he should be entitled to compensation for having been punished. He does not have to prove his innocence at his trial and it seems wrong in principle that he should be required to prove his innocence now (para 116).

(See below for further key quotes from the majority judgments)

Eric Metcalfe, JUSTICE's director of human rights policy, said:

Our system of justice is innocent until proven guilty. When the system breaks down, the innocent should not have to prove their innocence in order to be compensated.

The presumption of innocence is a basic human right. So too is the right to compensation for being wrongly convicted in certain cases.

Not every wrongly convicted person who deserves compensation will benefit from today's ruling, but at least the innocent will not have to prove their innocence in order to be eligible.

For further comment, please contact Eric Metcalfe, JUSTICE's human rights policy director, on 020 7762 6414 (direct line) emetcalfe@justice.org.uk.

Notes for editors

1. JUSTICE was granted leave to intervene before the Supreme Court by way of both written and oral submissions. An electronic copy of the written submissions is available on request. JUSTICE was represented pro bono by Alex Bailin QC and Alison Macdonald of Matrix Chambers and Kirkland & Ellis LLP.
2. Compensation for miscarriages of justice is governed by section 133 Criminal Justice Act 1988. Section 133(1) requires the Secretary of State to pay compensation to any person who has had their conviction reversed on the ground that 'a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice'.
3. Section 133 is based on Article 14(6) of the International Covenant on Civil and Political Rights 1966, which states: 'When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of

such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him'. The UK ratified the Covenant in May 1976.

4. Since its founding in 1957, JUSTICE has been the leading NGO concerned with correcting miscarriages of justice in the UK. Working with the BBC's *Rough Justice* and Channel Four's *Trial and Error* programmes, its work led to a significant number of convictions being set aside, and contributed to changes in law and practice in a number of areas, including the right to silence, the rules of evidence relating to identifications and confessions, and the need to safeguard against oppressive police questioning. It also campaigned for many years for the creation of the Criminal Cases Review Commission which was finally established in 1997.

Chairman of Council Baroness Kennedy of The Shaws QC Director Roger Smith OBE

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KEY EXTRACTS FROM THE SUPREME COURT JUDGMENT IN *R (ADAMS) V SECRETARY OF STATE FOR JUSTICE*

Lord Phillips, President:

A new fact will show that a miscarriage of justice has occurred when it so undermines the evidence against the defendant that no conviction could possibly be based upon it. This is a matter to which the test of satisfaction beyond reasonable doubt can readily be applied. This test will not guarantee that all those who are entitled to compensation are in fact innocent. It will, however, ensure that when innocent defendants are convicted on evidence which is subsequently discredited, they are not precluded from obtaining compensation because they cannot prove their innocence beyond reasonable doubt. (para 55)

Lord Hope, Deputy President:

It is one thing to be able to assert that the defendant is clearly innocent. Cases of that kind have become more common and much more easily recognised since the introduction into the criminal courts, long after article 14(6) of the ICCPR was ratified in 1976, of DNA evidence. It seems unlikely that the possibility of demonstrating innocence in this way was contemplated when the test in article 14(6) was being formulated. Watson and Crick published their discovery of the double helix in 1951, but DNA profiling was not developed until 1984 and it was not until 1988 that it was used to convict Colin Pitchfork and to clear the prime suspect in the Enderby Murders case. The state should not, of course, subject those who are clearly innocent to punishment and it is clearly right that they should be compensated if it does so. But it is just as clear that it should not subject to the criminal process those against whom a prosecution would be bound to fail because the evidence was so undermined that no conviction could possibly be based upon it. If the new or newly discovered fact shows conclusively that the case was of that kind, it would seem right in principle that compensation should be payable even though it is not possible to say that the defendant was clearly innocent. (para 97)

Baroness Hale:

I do sympathise with Lord Brown's palpable sense of outrage that Lord Phillips' test may result in a few people who are in fact guilty receiving compensation. His approach would of course result in a few people who are in fact innocent receiving no compensation. I say "a few" because the numbers seeking compensation are in any event very small. But Lord Phillips' approach is the more consistent with the fundamental principles upon which our criminal law has been based for centuries. Innocence as such is not a concept known to our criminal justice system. We distinguish between the guilty and the not guilty. A person is only guilty if the state can prove his guilt beyond reasonable doubt. This is, as Lord Sankey LC so famously put it in *Woolmington v Director of Public Prosecutions* [1935] AC 462, at p 481, the "golden thread" which is always to be seen "throughout the web of the English criminal law". Only then is the state entitled to punish him. Otherwise he is not guilty, irrespective of whether he is in fact innocent. If it can be conclusively shown that the state was not entitled to punish a person, it seems to me that he should be entitled to compensation for having been punished. He does not have to prove his innocence at his trial and it seems wrong in principle that he should be required to prove his innocence now. (para 116)