

JUSTICE PRESS RELEASE

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FOR IMMEDIATE RELEASE

STRASBOURG COURT CONFIRMS NEED FOR SAFEGUARDS TO ENSURE FAIR TRIAL WHEN HEARSAY EVIDENCE SOUGHT

The European Court of Human Rights today clarified a long standing debate between the UK Supreme Court and Strasbourg on when hearsay evidence should be admitted. In the case of *Horncastle* the UKSC had declined to follow the Strasbourg Court's requirement that in order to rely on hearsay it could not be the sole and decisive evidence in the case as this would prevent reliable evidence being heard at trial. The Grand Chamber in its judgment released today considered this view and accepted that the fairness of the proceedings as a whole was the determinate test:

It would not be correct, when reviewing questions of fairness, to apply [the sole and decisive] rule in an inflexible manner. Nor would it be correct for the Court to ignore entirely the specificities of the particular legal system concerned and, in particular its rules of evidence, notwithstanding judicial dicta that may have suggested otherwise.

Nevertheless, the Court did not distance itself from the importance of this test in ensuring that confrontation of the witness' evidence by the defendant is crucial in order to ensure a fair trial. It referred to JUSTICE's observations that what appears reliable may fall apart under cross examination:

The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case.

Jodie Blackstock, Director of Criminal and EU Justice Policy at JUSTICE said **'the ability to confront one's accuser is a fundamental principle of our common law. This judgment underlines the importance of that principle. Courts must ensure that they approach the admission of hearsay evidence with more careful scrutiny than previously, otherwise the defendant will be placed at an unfair disadvantage.'**

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Notes to Editors

1. *Al-Khawaja and Tahery v UK* was heard on appeal from the Fourth Section of the Strasbourg court to the Grand Chamber. It concerned hearsay evidence used at two trials, one where the witness was dead and the other where the witness was in fear. The Court upheld the use of hearsay in the first but not in the second case. The Court considered the other available evidence and the ability of the defendant to challenge the evidence. There was a lack of strong corroborating evidence in Tahery from which the Court concluded there were insufficient counterbalancing factors to compensate for the difficulties the defence faced.

2. JUSTICE was granted permission to intervene as a third party in the case. Our submissions are available here http://www.justice.org.uk/data/files/TPIs/Al_Khawaja_v_United_Kingdom_-_JUSTICE_intervention_april_10.pdf