

SUPREME COURT REJECTS STRASBOURG COURT REASONING ON THE PRESUMPTION OF INNOCENCE



Today the Supreme Court gave judgment in two appeals, in which JUSTICE intervened, on whether the presumption of innocence is violated by the compensation scheme for people who have been wrongfully convicted of criminal offences. By a 5-2 majority the Justices concluded that the presumption of innocence is not affected by the test that the Secretary of State applies when deciding whether a wrongfully convicted person is entitled to compensation.

The statutory compensation regime requires an applicant to have had their conviction quashed through a new or newly discovered fact that shows 'beyond reasonable doubt that they did not commit the offence.' This is an incredibly high threshold, which in practice means only those with DNA or alibi evidence proving innocence will be eligible. This type of evidence is rarely found. Such a narrow compensation test has contributed to there being only four successful compensation applications in the last four years, and would have excluded the Birmingham Six and Guildford Four from compensation.

The Supreme Court considered a long line of European Court of Human Rights cases on when the presumption of innocence is engaged in compensation regimes – including its leading Grand Chamber judgment on the UK - and when a test will offend the presumption of innocence to which a person is entitled once their conviction has been quashed.

The majority of the Justices disagreed with the reasoning of the European Court of Human Rights as to when the presumption of innocence is engaged in legal claims following a conviction. They found that the reasoning of the Strasbourg Court was unclear as to when the presumption will apply. As a consequence, the majority disagreed that the compensation regime in England and Wales infringes the presumption of innocence. The majority of Justices also concluded that it is possible to find a person ineligible for compensation without making any reference to whether they should be considered guilty of the acquitted criminal offence.

This is a disappointing decision, which the two dissenting Justices considered ignores the realities of how a person is acquitted and how the compensation test operates in practice. It also discounts the careful and detailed reasoning of the Strasbourg Court, which has set out the need for a link between the criminal acquittal and subsequent proceedings and for public authorities to avoid using language which calls into question the innocence of the person claiming compensation. JUSTICE agrees with Lord Reed's analysis that it is unrealistic to separate the compensation test of innocence from calling into question an applicant's general innocence of the crime. If compensation is denied because a new fact – which led to the acquittal - does not establish innocence, it can only undermine the person's acquittal.

JUSTICE's director, Andrea Coomber, said:

"The complexity of today's judgment highlights that this area of law needs urgent and serious overhaul by Parliament to ensure that where miscarriage of justice occurs, there is appropriate reparation. People who have served years in prison and had their convictions quashed deserve support to try to rebuild their lives. This includes not only compensation but readily available and suitable accommodation, financial allowances, psychological treatment and a review of what went wrong."

Notes to Editors

1. On 8-9 May 2018, JUSTICE intervened in the Supreme Court case, [R \(on the application of Nealon & Hallam\) v Secretary of State for Justice](#). The Court was tasked with considering whether the eligibility test for compensation breaches the presumption of innocence protected by Article 6(2) of the European Convention on Human Rights. The eligibility test is set out in s. 133(1ZA) Criminal Justice Act 1998, which was amended in 2014 to make the law clearer following a series of judicial reviews trying to define what “miscarriage of justice” meant for the purpose of the compensation test. Parliament declined to follow the test set out by the majority in the Supreme Court case of *Adams v Secretary of State for Justice* [2011] UKSC 18 and set the bar at the new or newly discovered fact demonstrating innocence.
2. The case concerns Victor Nealon and Sam Hallam. Both convicted of serious offences and sentenced to significant prison terms, serving 17 years and seven years respectively. Both were released following applications to the Criminal Cases Review Commission and referral back to the Court of Appeal Criminal Division. The Court quashed their convictions on the basis that new evidence demonstrated that the convictions were unsafe. When they subsequently applied for compensation, both Nealon and Hallam were denied.
3. JUSTICE intervened in the case as a third party acting in the public interest. It was represented pro bono by Henry Blaxland QC and solicitors White and Case LLP as well as JUSTICE Legal Director and barrister Jodie Blackstock.
4. JUSTICE intervened to provide context to the case, drawing upon our recently published report *Supporting Exonerees: ensuring accessible, consistent and continuing support*. We highlighted the impact of wrongful imprisonment on exonerees, the limited support available upon release and the trauma that victims almost universally suffer. We explained that the changes in the compensation regime have reduced the number of successful compensation applications and that Parliamentary debate around the 2014 amendment showed concerns as to its impact; although the then Ministers asserted that such a reduction would not occur, it seems that such assertions were based on inaccurate information. We provided a comparison with regimes in other similarly placed jurisdictions to indicate how a fair compensation scheme can operate, in particular pointing to the test that applies in Scotland.
5. Please direct any enquiries to jblackstock@justice.org.uk