

# JUSTICE PRESS RELEASE

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## **Law Lords rule against secret evidence, JUSTICE report calls for Parliament to act**

In an historic 9-0 ruling, the House of Lords this morning held that the use of secret evidence against control order suspects in situations where they did not know the case against them was unfair.

The Law Lords ruled that, unless a suspect was given 'sufficient information about the allegations against him to enable him to give effective instructions to the special advocate', there would be a breach of Article 6 of the European Convention on Human Rights.

As Lord Phillips, the senior Law Lord said, 'a trial procedure can never be considered fair if a party to it is kept in ignorance of the case against him' (paragraph 63 of the House of Lords judgment).

Lord Hope of Craighead said:

**The principle that the accused has a right to know what is being alleged against him has a long pedigree .... The fundamental principle is that everyone is entitled to the disclosure of sufficient material to enable him to answer effectively the case that is made against him (para 78).**

And:

**The consequences of a successful terrorist attack are likely to be so appalling that there is an understandable wish to support the system that keeps those who are considered to be most dangerous out of circulation for as long as possible. But the slow creep of complacency must be resisted. If the rule of law is to mean anything, it is in cases such as these that the court must stand by principle. It must insist that the person affected be told what is alleged against him (para 79).**

Lord Scott of Foscote said:

**An essential requirement of a fair hearing is that a party against whom relevant allegations are made is given the opportunity to rebut the allegations. That opportunity is absent if the party does not know what the allegations are. The degree of detail necessary to be given must, in my opinion, be sufficient to enable the opportunity to be a real one. The disclosure made to each of these appellants was insufficient to afford him a real opportunity for rebuttal. He did not, therefore, have a fair hearing for Article 6(1) purposes and these appeals must be allowed (para 96).**

The judgment coincides with the release of a major report by JUSTICE revealing the growth of secret evidence in British courts over the past decade. JUSTICE, which intervened in AF's case, this morning published a 238-page report revealing that, since 1997:

- Secret evidence has been used in a wide range of court proceedings from deportation hearings before SIAC, pre-charge detention hearings in terrorism cases, employment tribunals, asset-freezing cases, parole board hearings, and control order cases in the High Court and Court of Appeal (Parts 2 and 3 of report);
- More than 90 special advocates have been appointed since 1997. However no central figures are published and even the government may not know the total number of special advocates that have been appointed (pages 184-188);

- Defendants in some criminal cases are now being convicted on the basis of evidence that has never been made public. Criminal courts have issued judgments with redactions to conceal some of the evidence relied upon. Evidence from anonymous witnesses has also been used in criminal trials and is widespread in ASBO hearings (Part 3 of report);
- In a series of cases before SIAC, the Home Secretary breached a parliamentary assurance that secret evidence would not be used when assessing the risk of torture on return (page 42);
- In a case before the Parole Board, the Prison Service allegedly urged a witness to give false testimony in open court in order to conceal the source of secret evidence (page 98).

The report, the first comprehensive survey of the use of secret evidence since SIAC was created in 1997, shows how, over the last twelve years, the British traditions of open justice and the right to a fair hearing have increasingly been undermined by the use of secret evidence in closed hearings. It sets out recommendations for the reform of the current law and procedure in order to guarantee that all defendants are able to know the evidence against them.

In relation to the House of Lords judgment, Eric Metcalfe, JUSTICE's director of human rights policy, said:

**The House of Lords judgment marks a turning point. The government can decide to limp on with the use of secret evidence for the sake of ever diminishing returns. Or Parliament can act to end its use once and for all.**

**Either way, the unfairness of secret evidence is clear.**

In relation to JUSTICE's report on secret evidence, he said:

**Twelve years of secret evidence are enough.**

**Secret evidence is always unreliable, unnecessary, undemocratic and unfair. Because it has never been properly tested, it breeds complacency and false confidence in its results. Secret evidence damages public trust in our courts and in the rule of law itself.**

For further information, contact Eric Metcalfe on 07939 119 369 (mobile) or 020 7762 6415 (direct line) or via email to [emetcalfe@justice.org.uk](mailto:emetcalfe@justice.org.uk).

#### **Notes to editors**

1. A pdf copy of the 238-page report *Secret Evidence*, published with the assistance of Clifford Chance LLP, is attached, together with a summary and brief analysis of the House of Lords ruling in *AF*.
2. JUSTICE, the only NGO to have been granted leave to intervene in *AF and others v Secretary of State for the Home Department*, made oral and written submissions in the case. JUSTICE was represented pro bono by Michael Fordham QC, Jemima Stratford, Shaheed Fatima, Tom Richards and Clifford Chance LLP. A pdf copy of JUSTICE's written submissions are available on request.

*Chairman of Council* **Baroness Kennedy of the Shaws QC** *Director* **Roger Smith OBE**

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