

# JUSTICE PRESS RELEASE

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## **House of Lords decides control order appeals: 'A victory for fairness over secrecy'**

The House of Lords today held by a 4-1 majority that a defendant's right to a fair hearing in control order cases takes precedence over government claims of secrecy. The Law Lords also upheld, by a majority of 3-2, an earlier ruling by the Court of Appeal that the Home Secretary had no power to impose control orders involving 18-hour curfews on suspects.

The judgments will have significant implications for the government's use of control orders, particularly its reliance on secret evidence in closed hearings. Under the Prevention of Terrorism Act 2005, defendants are not allowed to know the evidence against them where the judge agrees that its disclosure would be contrary to national security. However, the Law Lords held that key evidence cannot be withheld from the defendant where that evidence is essential in order for the defendant to receive a fair trial.

In two control order cases, MB and AF, the majority of Law Lords concluded that both defendants had not enjoyed a fair hearing due to their inability to know the key accusations against them. Lord Bingham of Cornhill, the senior Law Lord, said **'the right to a fair hearing is fundamental'**. Another Law Lord, Lord Brown of Eaton-Under-Heywood referred to the right to a fair hearing as **'not merely an absolute right but one of altogether too great importance to be sacrificed on the altar of terrorism control'**.

The Law Lords also upheld, by a majority of 3-2, an earlier ruling by the Court of Appeal that the Home Secretary had no power to impose control orders involving 18 hour curfews without a derogation. Rejecting the government's arguments, Lord Bingham likened the curfews to being **'in solitary confinement'** and conditions generally as akin to **'detention in an open prison'**. Lord Brown said **'liberty is too precious a right to be discarded except in times of genuine national emergency. None is suggested here'**.

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

**The rulings are a victory for fairness over secrecy, and liberty over suspicion.**

**Nobody can receive a fair hearing without knowing the evidence against him. If we allow the fight against terrorism to trample upon basic principles of justice then we destroy the very values we fight for.**

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### **Notes to editors**

1. A summary of the House of Lords judgments in the control order appeals is attached. The full text of all three judgments can be found at <http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm>.
2. JUSTICE was granted permission to intervene in both *MB v Secretary of State for the Home Department* and *Secretary of State for the Home Department v JJ and others*. JUSTICE was also granted permission to intervene in both cases before the Court of Appeal in 2005.
3. JUSTICE was represented in the House of Lords by Michael Fordham QC and Tom Hickman (both of Blackstone Chambers) and Clifford Chance LLP.