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Convictions Quashed as Law Meets Fact in a Head-On Collision – Hayes, R. & Palombo, R. [2025] UKSC 29

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Date: 23 July 2025

Judges:

Lord Reed, President; Lord Hodge, Deputy President; Lord Lloyd-Jones; Lord Leggatt; Lady Simler

Key Words:

LIBOR, EURIBOR, conspiracy to defraud, benchmark submissions, subjective opinion, genuine belief, falsity, misrepresentation, commercial motivation, judicial misdirection, separation of law and fact, indictment precision, judicial construction, foreign law, Belgian law, appellate jurisdiction

Summary

The Supreme Court quashed the convictions of Tom Hayes and Carlo Palombo for conspiracy to defraud over LIBOR and EURIBOR submissions [1–4, 7–9].

The decisive error: trial judges misdirected juries by treating the genuineness of an opinion as a matter of law rather than a question of fact for the jury [4, 7–8, 120-124].

The Court clarified that:

- A benchmark submission is a subjective opinion, not an objective fact [7, 21–22, 25; 128–131].
- Whether the opinion is genuinely held is a factual question, dependent on the submitter's state of mind [4, 7–8, 25; 128–131].
- Motivations (e.g. commercial advantage) may be evidence of falsity, but do not make a statement false *as a matter of law* [8, 58–59; 219-223].

Key Themes:

1. *Law vs Fact – Judges decide the legal effect of documents; juries decide factual questions, including whether an opinion is genuinely held [4, 7–8, 91;* 120-123*].*
2. *Subjectivity of Benchmark Rates – LIBOR/EURIBOR submissions were inherently subjective, allowing for a range of valid opinions [7, 21–22, 25, 71–74; 128–131].*

3. *Falsity in Misrepresentation – An opinion is false only if the maker does not genuinely hold it [80-81, 90; 219-223].*
4. *Precision in Criminal Charges – Indictments must clearly define the agreement and dishonest means alleged [50, 54–59].*
5. *Limits of Judicial Construction – Only documents with legal effect are for judicial construction; genuineness is a factual issue [91; 120-123].*

Background

1. The Appellants – Hayes (LIBOR) sentenced to 14 years, reduced to 11 [1]; Palombo (EURIBOR) sentenced to 4 years [1].
2. The Allegations – Attempts to influence submissions for trading or reputational advantage [2, 26–28].
3. Procedural History – Convictions upheld by the Court of Appeal [3–4]; referred by the CCRC following *United States v Connolly and Black*, 24 F 4th 821 (2nd Cir 2022) [3, 27, 38–39]. Court of Appeal certified a point of law for the Supreme Court [5–6].
4. Supreme Court Approach – Addressed issues beyond the certified question to resolve the appeals [6, 42–46].

Legal Issues and Analysis

Conspiracy to Defraud

- Requires agreement, intention to cause prejudice, and dishonest means [49].
- Means alleged: procuring false/misleading submissions [53, 56; 60-64].

Definitions & "Genuine Assessment"

- **Defence** – Rates fell within a legitimate range; no single "correct" rate [65–67; 128–131].
- **Supreme Court** – Agreed that submissions involved opinion, not fact, and could be within a range [7, 21–22, 25, 71–74; 128–131].

Trial Misdirections

- **Hayes –** Judge Cooke ruled it was legally impermissible to consider commercial interests, equating this with falsity [82–84]. This removed the jury's role in deciding genuineness [8–9, 91].
- **Palombo –** EURIBOR Code under Belgian law prohibited commercial interest consideration [169-172, 174, 178-182, 198-206 211].
    - Judge Gledhill's directions still equated breach with falsity [207, 212, 221].
    - Mischaracterised breach of Belgian law as breach of "law of England and Wales" [211(v), 233].
    - Relied on a vague notion of "improper practice" without proof Palombo knew Code specifics [219-223, 228-230].
    - Conflated "deliberate disregard" with dishonesty, risking a guilty verdict without clear proof of a false opinion [227-233].

Conclusion

Both trials contained material misdirections that conflated fact and law, depriving juries of their role in determining whether the appellants genuinely held their stated opinions [4, 7–9; 120-123]. Convictions were unsafe and quashed [234-235].

***Key Takeaway**:*

1. ***Separate Law from Fact** –*
    1. *Law: contractual/statutory obligations, meaning of written terms [4, 91; 120-123].*
    2. *Fact: whether a person genuinely held an opinion, their state of mind, and intended meaning [4, 7–8, 25; 128–131].*
2. ***Opinion Statements** – False only if not genuinely held; commercial motives are evidence, not determinative [8, 25, 58–59; 219-223].*
3. ***Codes & Definitions** – Breach of codes or definitions does not automatically prove falsity [58–59, 91; 120-123].*
4. ***Clarity in Wrongdoing** – Define wrongful means distinctly; avoid conflating breach with misrepresentation [50, 54–59; 124–125, 120-123].*
5. ***Foreign Law** – Where applicable, interpretation is a factual matter requiring evidence; Belgian law governed the EURIBOR Code [164-165, 170-171, 172, 199-201].*

Parting Thoughts

In the end, the Supreme Court did not so much tinker with the convictions as detonate them with the precision of a well-aimed legal missile. The trials had gone off-course because the judges, in their zeal to police commercial morality, elbowed the juries aside and told them what to think about questions that were, in truth, theirs to decide. The difference between law and fact may sound like the sort of distinction only a barrister could love, but here it was decisive: the meaning of the LIBOR and EURIBOR definitions was a matter for judicial construction; whether a submission was a genuinely held opinion was a question of fact, dependent on the submitter's state of mind. And state of mind is the jury's turf.

The Court's message was unequivocal: you can't convict someone for conspiracy to defraud merely because their motives were murky or their commercial instincts self-serving. Motivation is evidence, not a legal guillotine. Nor does a breach of some code — Belgian, British, or Martian — automatically convert an opinion into a lie. At a stroke, the "cheapest rate" dogma and the trial judges' conflation of motive with falsity were consigned to the scrapheap of bad legal ideas.

So Hayes and Palombo walk free, not because the Court thought them saints, but because our criminal justice system, when working properly, insists on the jury deciding whether an opinion was honestly held. If that sounds like splitting hairs, it is — but they are the sort of hairs that separate a fair trial from a show trial. In financial markets, the line between sharp practice and fraud is perilously thin; in criminal law, the line between law and fact is not negotiable. Here, the latter just saved the former from an expensive miscarriage of justice.

Authorities:

Case Law:

Jury Misdirection / Judge's Role vs. Jury's Role / Falsity of Representation

- ***R v Hayes*** **[2015] EWCA Crim 1944; [2018] 1 Cr App R 10** – The Court of Appeal dismissed Hayes' first appeal, rejecting his claim that the judge misdirected the jury on what constituted a genuine LIBOR submission, especially regarding commercial interests. It held the judge was

"helpfully" applying *R v H* in stating that submissions could not be influenced by commercial considerations. The Supreme Court found this conflated the legal definition of LIBOR with the factual question of whether the submitter's opinion was genuinely held.

- ***R v H* [2015] EWCA Crim 46** – Refusal of leave to appeal against preliminary rulings confirmed panel banks must provide a genuine and honest LIBOR opinion and that considering commercial interests breached the LIBOR definition. The Supreme Court identified this as the "wrong turn" leading to Hayes' trial misdirection—misapplying a valid legal point to a jury question of fact.
- ***R v Merchant and Mathew* [2017] EWCA Crim 60; [2018] 1 Cr App R 11** – Appeals in other LIBOR cases were dismissed following Hayes' trial approach. Although acknowledging genuineness as a factual matter for the jury and preferring "genuine" to "honest" to avoid conflating with dishonesty, the Court still defended directions as legal guidance. The Supreme Court held this blurred falsity with dishonesty, leaving the jury's role under-addressed.
- ***United States v Connolly and Black* 24 F 4th 821 (2nd Cir 2022)** – On similar facts, rejected the "one true rate" theory, holding a submission within a range the bank could request, be offered, and accept was not false regardless of motive. The CCRC relied on this to refer Hayes' and Palombo's cases back, as U.S. prosecutors had failed to prove trader-influenced submissions were outside actual borrowing capability.
- ***R v Adams* [1994] RTR 220** – Confirmed that whether a representation was made and whether it was false were factual questions for the jury; legal effect was for the judge, meaning for the parties was for the jury. The Supreme Court said *Adams* had been misapplied and that belief and understanding in fraudulent misrepresentation remain factual issues.
- ***R v Perry* [2025] UKSC 17; [2025] 1 WLR 2055** – Approved Sir John Smith's view post-*Adams*: legal effect is for the judge; meaning for the parties is for the jury. Also reaffirmed that concurrent findings of fact by lower courts are not disturbed on second appeal absent exceptional circumstances.
- ***Chatenay v Brazilian Submarine Telegraph Co Ltd* [1891] 1 QB 79** – Lindley LJ distinguished between meaning of words (fact) and legal effect (law).
- ***Cozens v Brutus* [1973] AC 854** – Lord Reid held that the meaning of ordinary English words is a question of fact, while statutory construction is law.
- ***R v Spens* [1991] 1 WLR 624** – Determined the City Code resembled legislation and required judicial construction. Distinguished from *Adams* because in *Spens* interpretation related to dishonesty, not falsity.
- ***Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896** – Lord Hoffmann's contractual interpretation approach aligned with common-sense meaning, though the Supreme Court warned against overemphasis on language at the expense of legal content.
- ***R v Panel on Takeovers and Mergers, Ex p Datafin plc* [1987] QB 815** – Takeover Panel decisions were judicially reviewable, supporting *Spens*'s treatment of its Code as requiring legal construction.
- ***R & R Developments Ltd v Axa Insurance UK plc* [2009] EWHC 2429 (Ch); [2010] Lloyd's Rep IR 521** – In civil misrepresentation, construction of an insurer's application form was a question of law.
- ***Involnert Management Inc v Aprilgrange Ltd* [2015] EWHC 2225 (Comm); [2015] 2 Lloyd's Rep 289** – Similar civil context; construction of contractual statements was for the court.

Conspiracy to Defraud

- ***Scott v Metropolitan Police Commissioner*** **[1975] AC 819** – Defined conspiracy to defraud as an agreement, intent to prejudice, and dishonest means (not limited to deceit).
- ***R v Allsop*** **(1976) 64 Cr App R 29** – Clarified it suffices that conspirators know their gain will cause another's loss.
- ***Wai Yu-tsang v The Queen*** **[1992] 1 AC 269** – Reaffirmed that knowledge of loss suffices for conviction.
- ***R v Landy*** **[1981] 1WLR 355** – Stressed need for clear indictment particulars to prevent shifting prosecution theories.
- ***R v Hancock*** **[1996] 2 Cr App R 55** – Distinguished particulars of agreement from overt acts proving it.
- ***R v Skeene*** **[2025] EWCA Crim 17** – Continued *Hancock* distinction.
- ***HKSAR v Chen Keen (alias Jack Chen)*** **[2019] HKCFA 32; (2019) 22 HKCFAR 248** – Discussed complexities in separating particulars from overt acts.
- ***R v Evans (Eric)*** **[2014] 1 WLR 2817** – Conspiracy requires unlawfulness in object or means; lawful ends by lawful means cannot be criminal.
- ***R v Barton*** **[2020] EWCA Crim 575; [2021] QB 685** – Affirmed *Evans* principle.
- ***R v Ghosh*** **[1982] QB 1053** – Then-leading test for dishonesty, requiring both objective and subjective assessment.
- ***Akerhielm v De Mare*** **[1959] AC 789** – In fraudulent misrepresentation, focus is on the defendant's understanding and belief.

Belgian Law / Contractual Interpretation / Foreign Law

- ***R v B*** **[2018] EWCA Crim 73** – Upheld Belgian law interpretation that commercial interests were prohibited in EURIBOR submissions; refused extrinsic evidence.
- ***Devi v Roy*** **[1946] AC 508** – Established the general rule against disturbing concurrent factual findings on second appeal.
- ***Brownlie v FS Cairo (Nile Plaza) LLC*** **[2021] UKSC 45; [2022] AC 995** – Similar heritage systems allow presumption of similarity to English law, but not with Belgian civil law.
- ***The Moorcock*** **(1889) 14 PD 64** – Terms may be implied to give effect to a contract's purpose.
- ***Union of Shop, Distributive and Allied Workers v Tesco Stores Ltd*** **[2024] UKSC 28; [2025] ICR 107** – Reaffirmed implication of terms to achieve contractual purpose.

Appellate Procedure

- ***Attorney General for Northern Ireland v Gallagher*** **[1963] AC 349** – Section 33 Criminal Appeal Act 1968 allows appeals on any necessary points once leave is granted.
- ***R v Jones (Margaret)*** **[2006] UKHL 16; [2007] 1 AC 136** – Certified points do not limit Supreme Court jurisdiction; raising unrelated issues is discretionary.

Legislation:

The judgment centred on the criminal appeal framework and the scope of conspiracy to defraud as applied to the appellants' conduct.

Criminal Appeals and Supreme Court Jurisdiction

- **Criminal Appeal Act 1968** – Section 33 allowed a Supreme Court appeal in a criminal case only if the Court of Appeal certified a point of law of general public importance. Once permission was granted, the Supreme Court's jurisdiction was not confined to the certified point and could address other issues necessary to resolve the appeal. Section 35(3) empowered the Court to exercise any powers of the Court of Appeal or remit the case, including granting leave on grounds unrelated to a Criminal Cases Review Commission (CCRC) reference.
- **Criminal Appeal Act 1995** – Section 9(2) treated a conviction referred by the CCRC as an appeal under section 1 of the 1968 Act. Sections 14(4A)–(4B), inserted by the Criminal Justice Act 2003, restricted such appeals to the CCRC's stated grounds unless leave was granted by the Court of Appeal or Supreme Court.

Substantive Criminal Offences

- **Criminal Law Act 1977** – Section 1 created the statutory offence of conspiracy; section 5(1) abolished common law conspiracy except for conspiracy to defraud preserved by section 5(2). The judgment noted the preserved offence's breadth and vagueness.
- **Fraud Act 2006** – Although the Law Commission had recommended abolishing conspiracy to defraud, calling it an "indefensible anomaly," the government retained it. Section 2(1) defined fraud by false representation, which could form the dishonest means in a conspiracy to defraud.
- **Financial Services Act 2012** – Section 91(1) created an offence of making false or misleading statements in setting a relevant benchmark, but it post-dated the appellants' conduct.

Foreign Law and Contractual Interpretation

- **Administration of Justice Act 1920** – Section 15 required that questions of foreign law in jury trials be decided by the judge; relevant here to Belgian law and the EURIBOR Code.
- **Rome I Regulation (EC) No 593/2008** – Article 10 determined contract validity by the law governing it if valid; Articles 3(1) and 4 supported Belgian law applying to the EURIBOR Code by choice or closest connection.

Investigatory and Procedural Framework (Specific Case)

- **Serious Organised Crime and Police Act 2005** – Section 73 allowed Hayes to agree with the SFO to cooperate and plead guilty for a reduced sentence, avoiding U.S. extradition; he later withdrew from the agreement.

Legal Texts & Commentary

The judgment did not label this as a separate section but cited several works relevant to the safety of the convictions, grouped and prioritised by theme.

1. Interpretation of Legal Documents and Misrepresentation in Criminal Law

- **Sir John Smith, note in *Crim LR* (R v Adams) 525–526** – Distinguished between the legal effect of a document (for the judge) and its meaning as understood or intended by the maker or reader (for the jury). The Supreme Court said this "precisely encapsulates the position" and had recently approved it.
- **Frederick Wilmot-Smith, "Term Limits: What is a Term?" (2019) 39 OJLS 705, 707–708, 717** – Explained that contractual interpretation aligns with common-sense principles but focuses on legal content rather than linguistic form, supporting the Court's finding that construing the LIBOR definition as a matter of law was a misdirection.

- **John Cartwright, *Misrepresentation, Mistake and Non-Disclosure*, 7th ed (2025), para 5-19** – Supported the view that fraudulent misrepresentation turns on how the defendant understood the question and believed their answer would be understood, akin to civil fraud cases.

2. Critique and Reform of Common Law Offences (Conspiracy to Defraud)

- **Law Commission, *Fraud* (2002), Law Com No 276, paras 1.4, 3.2–3.5, 9.6** – Recommended abolishing conspiracy to defraud as an "indefensible anomaly," underscoring its controversial nature.
- **Smith, Hogan and Ormerod's *Criminal Law*, 17th ed (2024), pp 493, 501–503** – Criticised the offence as overly broad, vague, and inconsistent with legal certainty.
- **Fraud Law Reform – Government Response to Consultations (Nov 2004), para 45** – Confirmed the government's decision to retain conspiracy to defraud despite Law Commission calls for abolition.

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