



## Press Summary

23 July 2025

### **R (Respondent) v Hayes (Appellant); R (Respondent) v Palombo (Appellant)**

**[2025] UKSC 29**

*On appeal from [2024] EWCA Crim 304*

**Justices:** Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Leggatt and Lady Simler

### **Background to the Appeal**

The appellants, Tom Hayes and Carlo Palombo, are appealing against their convictions in, respectively, August 2015 and March 2019 of offences of conspiracy to defraud. They were accused of conspiring with others to manipulate key benchmark interest rates used in financial markets: in Mr Hayes’ case, the London Inter-bank Offered Rate (“**LIBOR**”); and in Mr Palombo’s case, the Euro Inter-bank Offered Rate (“**EURIBOR**”). A benchmark rate is an interest rate intended to reflect the current cost of borrowing in a market. It can be used as a reference point in a variety of transactions, including financial derivatives. Banks participating in the setting of the benchmark rate were asked to submit the rate at which that bank (in the case of LIBOR), or a prime bank (in the case of EURIBOR), could borrow funds at a specified time. The rates submitted were averaged and trimmed to generate the rate published for that day. [11-12], [17-20], [24]

In both cases the prosecution alleged that the defendant had dishonestly agreed with others to procure or make submissions of rates for use in setting LIBOR or EURIBOR which were false or misleading in that they were intended to create a trading advantage and deliberately disregarded the proper basis for the submission of those rates, thereby intending to prejudice the economic interests of others. Mr Hayes and Mr Palombo were each convicted at a trial. Mr Hayes was sentenced to 14 years’ imprisonment, reduced on appeal to 11 years. Mr Palombo was sentenced to 4 years’ imprisonment. One of the grounds on which Mr Hayes sought to appeal against conviction was that the judge had misdirected the jury about what they had to decide, with the result that an essential question of fact had been withdrawn from the jury’s consideration. The Court of Appeal rejected that argument and dismissed the appeal. The Court of Appeal again approved the directions given at Mr Hayes’ trial in a later case. [2-3], [139-141], [142-145]

In 2023, the Criminal Cases Review Commission referred the appellants' convictions back to the Court of Appeal after a court in the United States decided a similar LIBOR manipulation case differently, which led to convictions being quashed and charges dropped in that jurisdiction. The appellants renewed their argument that the judge's directions to the jury at their trials were wrong in law. The Court of Appeal decided that the appellants should not be allowed to make this argument because it did not relate to the reason for the reference and, in any case, it had already been considered and rejected by the Court of Appeal as a bad one. The Court of Appeal dismissed the appeals and upheld the convictions, but certified that the appeals raised the following point of law of general public importance:

“Whether as a matter of law upon the proper construction of the LIBOR and EURIBOR definitions:

- (a) If a LIBOR or EURIBOR submission is influenced by trading advantage, it is for that reason not a genuine or honest answer to the question posed by the definitions; and
- (b) the submission must be an assessment of the single cheapest rate at which the panel bank, or a prime bank, respectively, could borrow at the time of submission, rather than a selection from within a range of borrowing rates.”

The Supreme Court granted permission to appeal. [3-6]

## **Judgment**

The Supreme Court unanimously answers both parts of the certified question in the negative, allows both appeals and quashes the appellants' convictions. Lord Leggatt gives the reasons for the decision, with which the other Justices agree.

## **Reasons for the Judgment**

The definition of LIBOR asked banks on the panel of banks that contributed to the setting of LIBOR to submit the rate at which the panel bank could borrow funds (in a particular currency, for a particular period) at the time of the submission. The question posed by the EURIBOR definition was similar except that it asked for the rate at which a “prime bank” could borrow funds. Identifying the rate at which a bank could borrow funds at the specified time was not simply a matter of reading a number off a screen. It required a subjective assessment of various data sources and was a matter of opinion - particularly as the number submitted had to be stated to two (or in some cases five) decimal places. Although a bank would generally be expected to borrow at the cheapest rate available, determining what that rate was typically involved selecting a figure from within a range of borrowing rates which could legitimately be regarded as a true answer to the question posed by the definition. [21-22], [25], [69-74]

An essential part of the prosecution case was that the defendant had agreed with others to procure or make submissions of rates which were “false or misleading”. As the answer to the question posed by the LIBOR or EURIBOR definition was a matter of opinion, the submission of a rate could only be “false or misleading” if it did not represent the submitter's actual opinion of the relevant borrowing rate. That was a question of fact which, in a criminal trial, is the province of the jury and not the judge to decide. [7], [80], [212]

In his defence Mr Hayes admitted that, when there was a range of potential borrowing rates, he had tried to influence submitters to put forward numbers within that range which would advantage his trading. But he denied that he had attempted or agreed with others to induce submitters to put forward rates which did not represent their genuine opinion. [65-66], [129] At Mr Hayes' trial the judge directed the jury that, if any consideration had been given to whether the rate submitted would be to the commercial advantage of the bank or a trader, then,

as a matter of law, the rate submitted could not for that reason be a genuine or honest answer to the question posed by the LIBOR definition. As it was not disputed that Mr Hayes had asked submitters to put forward rates intended to advantage his trading, the judge in effect instructed the jury - as matter of law - that Mr Hayes had agreed to procure the submission of rates which were not genuine or honest assessments of the bank's borrowing rate and were therefore false or misleading. [125-131]

As discussed in detail in the judgment, that was an error. The law could not dictate whether or not the answer given to the question posed by the LIBOR definition represented the submitter's genuine opinion; nor whether Mr Hayes had intended or agreed to procure submitters to put forward rates which did not represent their genuine opinion. These were questions of fact which should have been left to the jury to decide. The jury might well have regarded the fact that a submission was influenced by trading advantage as supporting an inference that the figure submitted was not in truth a rate at which, in the submitter's opinion, the panel bank could borrow money at the relevant time. But it was for the jury to decide whether to draw that inference, and not for the judge to tell them they must do so because the law required it.

There was ample evidence on which a jury, properly directed, could have found the appellant guilty of conspiracy to defraud. But the jury was not properly directed. The effect of the judge's directions was to usurp the function of the jury and remove from them consideration of Mr Hayes' defence to the allegation that he had agreed to the submission of rates which were false or misleading. That made the trial unfair and leads to the conclusion that Mr Hayes' convictions must be quashed. [8], [9], [129-131], [162]

In Mr Palombo's case, the jury directions given are not open to the same degree of criticism; but they still involved the same essential error of treating a question of fact as if it were a matter of law. Compounded with other errors and ambiguities in the directions, the result is that Mr Palombo's conviction is also unsafe and must be quashed. [207-234]

*References in square brackets are to paragraphs in the judgment.*

**NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**