

Chapter 22: Judgments as evidence of the facts upon which they were based

Criminal proceedings

Previous convictions

Exclusion under s 78 of the Police and Criminal Evidence Act 1984

The question of relevance

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In *R v Shirt* [2019] 1 Cr App R 199 (15), the guilty pleas of co-accused were properly admitted because the judge had given a clear direction that the pleas had 'extremely limited relevance', namely they were limited to the existence of the conspiracy and did not in any way bear on the other issues which needed to be resolved in order to convict the accused (at 207).

Footnote 88

See also *R v Merchant* [2018] 1 Cr App R 165 (11): it did not have an adverse effect on the fairness of the proceedings to admit guilty plea of a co-accused to prove a conspiracy to defraud when fixing the LIBOR rate for the US dollar because the plea '... did not prove too much' (at p 177).

The burden and standard of proof

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It will be necessary for the judge to give the jury a direction to this effect (a reverse burden direction). See the update for **Ch 4 The Burden and Standard of Proof, The standard of proof, Where the accused bears the legal burden**.

See also the Crown Court Compendium (July 2019), Part 1, 5-2, Example 2 and 12-2, para 2. See further, *R v Merchant* [2018] 1 Cr App R 165 (11): it was unclear whether a reverse burden direction was required where the direction had not been sought at trial and the relevant accused's defence was that he had not conspired with the party whose guilty plea had been admitted. See also *R v Shirt* [2019] 1 Cr App R 199 (15): where it comes to light during cross-examination that the co-accused whose guilty plea has been admitted suffered mental health problems, comment by advocates may be permitted regarding the reliability of the plea, subject to an overall direction to avoid speculation (at 207).

ADDITIONAL READING

Munday, 'Proof of guilt by association under section 74 of the Police and Criminal Evidence Act 1984' [1990] Crim LR 236.

An article which critically analyses the operation of section 74, covering: (i) whether Parliament intended s 74 to be applied to the kind of cases which have come before the Court of Appeal; (ii) the artificiality of the distinction made in directions to the jury, that evidence of a co-accused's guilty plea is only evidence of the fact that an offence occurred and is not evidence of the accused's guilt; (iii) the inability of an accused to properly challenge the evidence of a co-accused who is not present; and (iv) the difficulty any accused would face in proving, on the balance of probabilities, that the co-accused did not commit the offence to which the guilty plea relates.