

## Ch 23: Judgments as evidence of the facts upon which they are based

### Criminal proceedings

### Previous convictions

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Section 74 of the Police and Criminal Evidence Act 1984 been amended by

The Criminal Justice (Amendment etc) (EU Exit) Regulations 2019, SI 2019/780, s 29(1) & (3). References to ‘any other member state’ in the subsections of s 74 have been removed.

Section 75 has been amended by amended by The Criminal Justice (Amendment etc) (EU Exit) Regulations 2019, SI 2019/780, s 29(1) & (4).

Section 75(1) is now as follows.

“Where evidence that a person has been convicted of an offence is admissible by virtue of s 74 above, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based—

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.”

In *R v Reece* [2020] EWCA Crim 44, no issue of rebuttal under s 74(3) arose where the accused, during his evidence-in-chief, raised a question about whether he committed the offence to which the conviction related and then, in answer to the judge seeking clarification, stated that he accepted the conviction because he *had* to accept it.

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

### **Conspiracy cases**

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Many of the authorities predate the bad character and hearsay provisions of the Criminal Justice Act 2003, which have widened the ambit of evidence that a jury may be trusted with. However, the approach taken by the courts before 2003 remains 'extremely relevant': *R v S* [2007] EWCA Crim 2105 at [17]. Thus where the effect of admitting the evidence would be to close off the central issues that the jury must determine, the evidence will be excluded: *R v S* [2007] EWCA Crim 2105 at [18]. See also *R v Horne* [2020] 4 WLR 103, CA.

However, where there are only two alleged co-conspirators in a closed conspiracy, a direction which seeks to limit the impact of the evidence of the guilty plea of the other conspirator is unlikely to avoid unfairness: see, eg, *R v Horne* [2020] 4 WLR 103, CA and *R v S* [2007] EWCA Crim 2105.