

Human Trafficking & Modern Slavery Offences Update

Modern Slavery Act 2015:

How the Criminal Justice System deals with the fine line between a person's status as a victim and an offender

What is Human Trafficking?

ACT

- recruiting
- transporting
- transferring
- harbouring
- Receiving
- Transferring control of V

MEANS

- threats
- force
- Abduction
- deception
- Abuse of power
- Payment or benefit

PURPOSE: EXPLOITATION

Modern Slavery & Trafficking Offences: An Overview of the Criminal Law

- Commercial / labour exploitation
 - Public facing: nail bars, restaurants, car washes
 - Supply chain: agriculture, food processing & packaging, garment sector
- Domestic servitude
 - Childcare and domestic services
- Sexual exploitation
 - Controlling sexual services



The Modern Slavery Act 2015

Statutory Provisions

1 Slavery, servitude and forced or compulsory labour

- (1) A person commits an offence if—
 - (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or
 - (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.
- (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.
- (3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

Part 2: Human Trafficking

2 Human trafficking

- (1) A person commits an offence if the person arranges or facilitates the travel of another person (“V”) with a view to V being exploited.
- (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).
- (3) A person may in particular arrange or facilitate V’s travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.
- (4) A person arranges or facilitates V’s travel with a view to V being exploited only if—
 - (a) the person intends to exploit V (in any part of the world) during or after the travel, or
 - (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.
- (5) “Travel” means—
 - (a) arriving in, or entering, any country,
 - (b) departing from any country,
 - (c) travelling within any country.

Defining Exploitation

Slavery, servitude and forced or compulsory labour

- (2) The person is the victim of behaviour –
 - (a) which involves the commission of an offence under section 1, or
 - (b) which would involve the commission of an offence under that section if it took place in England and Wales.

Sexual exploitation

- (3) Something is done to or in respect of the person –
 - (a) which involves the commission of an offence under –
 - (i) section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of children), or
 - (ii) Part 1 of the Sexual Offences Act 2003 (sexual offences), as it has effect in England and Wales, or
 - (b) which would involve the commission of such an offence if it were done in England and Wales.

Securing services etc by force, threats or deception

- (5) The person is subjected to **force, threats or deception** designed to induce him or her –
- (a) to **provide services of any kind,**
 - (b) to provide another person with benefits of any kind, or
 - (c) to enable another person to acquire benefits of any kind.

Securing services etc from children and vulnerable persons

- (6) Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), **having chosen him or her** for that purpose **on the grounds** that –
- (a) **he or she is a child,** is mentally or physically ill or disabled, or has a family relationship with a particular person, and
 - (b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose.

4 Committing offence with intent to commit offence under section 2

A person commits an offence under this section if the person commits any offence with the intention of committing an offence under section 2 (including an offence committed by **aiding, abetting, counselling or procuring** an offence under that section).

Penalties

5 Penalties

- (1) A person guilty of an offence under section 1 or 2 is liable—
 - (a) on conviction on indictment, to imprisonment for life;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both.
- (2) A person guilty of an offence under section 4 is liable (unless subsection (3) applies)—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both.
- (3) Where the offence under section 4 is committed by kidnapping or false imprisonment, a person guilty of that offence is liable, on conviction on indictment, to imprisonment for life.
- (4) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the references in subsections (1)(b) and (2)(b) to 12 months are to be read as references to 6 months.

Charging Cases under MSA 2015

- Clear & compelling evidence of trafficking and exploitation then charge
- Absence of evidence
- Make allowances for overlapping legislative changes:
 - activities pre-dating MSA 2015 should be prosecuted under the relevant legislation
 - those post-dating 01/08/2015 Modern Slavery Act offences should be indicted
- Charge particular and specific offending outside exploitation
- Be mindful of the complexity of trial presentation & totality of sentence



CPS

The Palermo Protocol: Principles of the 'Criminal' Victim



- Principle: victims should not be prosecuted for criminal acts they were compelled to commit because of their trafficking
- S. 45: different test for children and adults
- State duty of operational measures to protect where credible suspicion
- Must demonstrate a direct connection between the criminal act and being a victim of human trafficking

Modern Slavery Caselaw

- R v M(L) and others [2010] EWCA Crim 2327
- R v N(A) and others [2012] EWCA Crim 189
- R. v L(C) [2013] EWCA Crim 991, [2013] 2 Cr. App. R. 23
- R. v Joseph (Verna Sermanfure) [2017] 1 W.L.R. 3153 [2017] 1 Cr. App. R. 33 [2017] Crim. L.R. 817
- See MK v R [2018] EWCA Crim 667

- R v EK [2018] EWCA Crim 2961
- R-v- JXP [2019] EWCA Crim 1280, 2019 WL 03290240
- R-v-A [2020] EWCA Crim 1408
- R -v- DS [2020] EWCA Crim 285
- DPP v M, 2020 WL 07356619 (2020)
- VCL and A.N v The UK 74603/12 and 77587/12
Judgment 16.2.2021 [Section IV]

Modern Slavery Act section 45: Slavery/Trafficking as a Defence

- The National Referral Mechanism
- Section 45 defence explained
- Operation of the statutory defence not adequately protecting the victims or public
- Traffickers abusing the statutory defence
- Sentences were *'light'*





Oct 2020 Report on Modern Slavery

- How law enforcement and financial institutions can work more effectively to tackle exploitation
- Operational measure to protect victims
- Forensic and local authority co-operation and resourcing to detect and investigate exploitation
- Legal respect for Article 4 rights

Effective Defence Engagement

- Referrals are coming too late in the process
- CPS/Judicial skepticism of finding
- Expert evidence where NRM assessment delayed or finding not accepted

The Wrongly Prosecuted Victim

- R. v O, CLW/08/36/2, [2008] EWCA Crim 2835
- R. v Craciunescu (Alexandra)
- R. v L (VC)
- R. v N (NT)
- R. v Nguyen (Dong)
- R. v A (A) (Same intervening) (Practice Note), CLW/17/09/4, [2017] 1 W.L.R. 3153, CA.

Law Enforcement: Chasing Guns Rather than Tackling Exploitation

- Chasing guns rather than dealing with vulnerable people and stopping exploitation
- Modern investigative approach to detecting human trafficking and slavery offences:
 - TOEX: Tackling Organised Exploitation with new data platform & intel/analytical tools
 - ALLTECH (UK) LIMITED: Translation Tools early informal device translation reading tool for intel contained in foreign language



Richard Jory QC

'When it comes to serious cases the devil is always in the detail and this advocate always masters the detail. Calm under pressure, precise in questioning and superb in closing.'

Legal 500 (2021)

Ranked in Chambers & Partners and the Legal 500 as a Leading Silk and described as a *'fantastic strategist'* and *'a thoroughly prepared and persuasive'*



Szilvia Booker

'Deceptively good at cross-examination'

Legal 500 (2020)