

Parosha Chandran

Call: 1997

Specialist in:

- Personal Immigration
- Civil Actions Against Public Authorities
- Modern Slavery & Trafficking Team



Experience

Professor Parosha Chandran is a multi-award-winning human rights barrister and a world-leading authority on the law relating to human trafficking, modern slavery and forced labour. She is a distinguished, internationally renowned figure known for her work to develop legal protections for victims of human rights abuses and has shaped domestic, regional and international legal standards in her fields for nearly three decades.

Uniquely, she is the only lawyer representing victims of trafficking to have secured three unanimous judgments of the European Court of Human Rights, each against a different State (2021, 2024, 2024), establishing globally influential principles on victim identification, non-punishment, investigative duties, the appreciation of the irrelevance of consent and the contours of coercion and vulnerability in trafficking cases. Her domestic and international jurisprudence has been widely cited and has directly influenced the evolution of State obligations, thereby strengthening victims' rights and the interpretation of trafficking laws across Europe and beyond.

Her influence and impact involve precedent-setting litigation, major legislative reforms, expert advisory roles to the United Nations, Council of Europe, Parliaments and national governments worldwide, as well as the provision of extensive judicial, parliamentary, prosecutorial and law-enforcement training across numerous jurisdictions. She is a strong supporter of civil society organisations and works closely with NGOs.

Her awards include the UK's Barrister of the Year Award (2008) and the United States Government's Trafficking in Persons Hero Award (2015), conferred by the Obama Administration for her exceptional, world-leading contribution to combating human trafficking, protecting victims and advancing the rule of law:

"[i]n recognition of her tireless efforts to develop and advance national and international law and policy on human trafficking in the United Kingdom and abroad, her unwavering commitment to protecting victims, and her unparalleled achievement in providing legal services to survivors of modern slavery" (John Kerry, Secretary of State, July 2015).

She has advised on the laws of dozens of States, including having contributed expert advice to the British Parliament on several features of victim protection during the passage of the Modern Slavery Act 2015. She is a distinguished contributor to international guidance, having been involved in shaping multiple UN legal texts, authored foundational scholarship, and co-authored the Council of Europe's extensive HELP online learning course on Combating Trafficking in Human Beings for legal professionals of all the 46 Member States of the Council of Europe (2017 & current 2024 edition).

In 2018 she was appointed the inaugural Professor of Practice in Modern Slavery Law at King's College London where she leads the LLM module 'The Law and Practice of Modern Slavery' and supervises postgraduate LLM scholarship and research. This was the first professorship of its kind in the world and was established in view of her global influence and excellence in her fields of specialism and expertise.

Private hourly fee rate available on request.

Expert Witness – Transnational Trafficking Civil Liability

Professor Chandran accepts instructions as an independent expert witness in transnational civil litigation concerning human trafficking and modern slavery, including cross-border litigation involving the comparative analysis of English law and foreign legal systems.

Her expert work engages proceedings in which issues of foreign law, comparative legal frameworks, and the adequacy and operation of domestic remedies across jurisdictions arise.

She provides expert evidence on the structure, operation and limitations of civil liability frameworks in trafficking cases, with particular expertise in English law and also its interaction with United States federal statutory regimes, including the Trafficking Victims Protection



Reauthorization Act (TVPRA). She has been instructed in complex and high-value proceedings involving both corporate and individual defendants and has prepared comparative legal analysis addressing private rights of action, civil causes of action, corporate liability, remedies and enforcement mechanisms, jurisdictional access, forum non conveniens considerations, and the adequacy of domestic legal protections in transnational claims.

Her expert analysis focuses on statutory architecture, corporate and personal liability exposure, the availability and effectiveness of civil remedies, procedural and evidential barriers to recovery, and the relationship between domestic legal systems and international anti-trafficking obligations.

This work draws upon nearly three decades of specialist practice at the Bar representing victims of trafficking, exploitation and human rights abuses, her academic research and teaching in human trafficking and modern slavery law, and her advisory role to the UK Parliament during debates on proposed civil remedy provisions under the Modern Slavery Act 2015, including analysis of the structural limitations of existing domestic remedies.

She is available to provide written expert reports and, where required, oral expert evidence.

Sports Law, Governance and Athlete Safeguarding

Alongside her core trafficking and exploitation practice, Professor Chandran has developed a specialist practice at the intersection of sports law, governance, and human rights, with particular expertise in safeguarding and the prevention of exploitation of athletes in international sport, including children and young people.

Her sports law work draws on training in sports law and nearly three decades of practice in human rights and trafficking litigation. She is recognised for her legal work on sports trafficking and the transnational exploitation of athletes, including analysis of regulatory failures, governance structures, and cross-border accountability mechanisms.

Professor Chandran serves as an Independent Expert to the NGO Mission 89 and has contributed to global legal and policy discussions on athlete protection, governance, and institutional accountability, including chairing high-level meetings at the United Nations in New York and Geneva and in the Middle East. Her work in this field focuses on the application of domestic and international legal frameworks to States, sporting bodies, and sports agents operating across jurisdictions, particularly in relation to safeguarding duties, governance



failures, and systemic accountability.

European Court of Human Rights – Leading Cases

B.B. v Slovakia (2024) – final Jan 2025

<https://hudoc.echr.coe.int/eng?i=001-237439>

Landmark judgment addressing coercion, vulnerability, consent, State investigative duties and improper reclassification (downgrading) of trafficking offences. States must demonstrate an understanding of the many subtle ways an individual can fall under the control of another (§99). Violation of Art 4 ECHR (unanimous finding).

T.V. v Spain (2024) – final Jan 2025

<https://hudoc.echr.coe.int/eng?i=001-236200>

Seminal judgment strengthening investigative obligations on States in trafficking cases, requiring States to have significant reasons to discontinue trafficking investigations or prosecutions owing to the devastating impact this may have on victims. “The domestic authorities displayed blatant disregard for the obligation to investigate serious allegations of human trafficking, an offence with devastating consequences for its victims” (§118). Violation of Art 4 ECHR (unanimous finding).

V.C.L. & A.N. v United Kingdom (2021)

<https://hudoc.echr.coe.int/fre?i=001-207927>

Landmark global authority on the non-punishment principle and trafficking victim identification. States must have trained, qualified persons to conduct trafficking identifications (§160). Any decision on whether or not to prosecute a potential victim of trafficking should only be taken once a trafficking assessment has been made by a qualified person, based on the international definition of trafficking (§161). Prosecutors must have clear reasons consistent with the three-part international definition of human trafficking to justify continuing a prosecution. “In the Court’s view, the duty to take operational measures under Article 4 of the Convention has two principal aims: to protect the victim of trafficking from further harm; and to facilitate his or her recovery. It is axiomatic that the prosecution of victims of trafficking would be injurious to their physical, psychological and social recovery and could potentially leave them vulnerable to being re-trafficked in future. Not only would they have to go through the



ordeal of a criminal prosecution, but a criminal conviction could create an obstacle to their subsequent integration into society. In addition, incarceration may impede their access to the support and services that were envisaged by the Anti-Trafficking Convention” (§159). An ineffective police investigation into a victim’s trafficking will deprive the victim from receiving evidence that may be useful for their defence to criminal charges. Violations of Arts 4 and 6 ECHR (unanimous findings).

M. v United Kingdom (2009)

Communication: <http://www.bailii.org/eu/cases/ECHR/2008/522.html>

Friendly Settlement Striking-out: <http://www.bailii.org/eu/cases/ECHR/2010/1229.html>

First trafficking-related international protection case taken to the ECtHR against the UK. First case where Interim Measures (now Rule 39 ECHR Rules of Procedure) were granted to prevent a removal to protect against the risk of sexual exploitation (re-trafficking) in the country of origin. Case settled following the UK’s grant of immigration leave to the victim.

United Kingdom – Selected Precedent-Setting Cases

Basfar v Wong [2022] UKSC 20

Supreme Court of England and Wales. Case concerning Diplomatic Immunity. World’s first judgment allowing trafficking victims to sue serving diplomats for compensation. Represented the UN Special Rapporteur on Trafficking in Persons as Counsel (Intervener).

<https://www.bailii.org/uk/cases/UKSC/2022/20.html>

R v AAD & Others [2022] EWCA Crim 106

Court of Appeal. Case concerning non-punishment. Developed abuse-of-process law and policy for trafficking victims seeking to confront criminal charges. Represented the UN Special Rapporteur on Trafficking in Persons as Counsel (Intervener).

<https://www.bailii.org/ew/cases/EWCA/Crim/2022/106.html>

Said & Ors v SSHD [2015] EWHC 879 (Admin)

Complex immigration and human rights related case. Subsequently involved Contempt of Court proceedings against the SSHD which settled. Litigation led to a substantial settlement award for Article 8 ECHR breaches.

<https://www.bailii.org/ew/cases/EWHC/Admin/2015/879.html>



MP & Anor v SSHD [2014] EWCA Civ 829

Complex immigration case. Represented the Intervener.
<https://www.bailii.org/ew/cases/EWCA/Civ/2014/829.html>

R v L & Others [2013] EWCA Crim 991

Landmark non-punishment/exploitation appeals concerning victims prosecuted and convicted for criminal acts. Represented two of the successful appellants. Presented legal arguments under Art 8 EU Trafficking Directive 2011 which led to the quashing of the criminal convictions of all the appellants. L's case: developed the understanding of the meaning of 'compulsion' and the nexus under non-punishment law (§74); T's case: developed an understanding of victim inconsistencies being characteristic of trafficking (§55).
<https://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html>

PO (Nigeria) v SSHD [2011] EWCA Civ 132

Case concerned Refugee Protection for a victim of trafficking who had been trafficked by a trafficking gang. The PO (Nigeria) case above was part of a long line of litigation stemming from 2007 which ultimately led to the Court of Appeal ruling in 2011, led by Dinah Rose KC (reflecting a 2009 Tribunal ruling referred to in the judgment) that victims of international human trafficking by a criminal network/gang/organised criminal group will not know the identity of every person who was involved in their trafficking, thereby heightening their risk on return to their country of origin. Following the Court of Appeal judgment the client was granted Refugee status. <https://www.bailii.org/ew/cases/EWCA/Civ/2011/132.html>

Patience Asuquo v Chief Commissioner of the Police of the Metropolis (2009)

(Unreported)

High Court: First trafficking-related judicial review against the Metropolitan Police for breach of Article 4 ECHR positive obligations for having failed to investigate a human trafficker in a domestic servitude case. Commissioner responded proactively, settling the case in favour of the claimant. He furthermore disbanded the Met's trafficking team, re-trained its police officers to recognise and identify exploitation crimes of servitude, slavery and forced labour (alongside its expertise on sex-trafficking), and created a new investigation team, the Human Trafficking and Exploitation Command.

Legislative Reform: Patience's case exposed a legislative gap in English law, the absence of

free-standing criminal offences of slavery servitude and forced labour. Professor Chandran worked with Baroness Young of Hornsey, Anti-Slavery International and Liberty, leading to s71 Coroners and Justice Act 2009, subsequently enacted as Section 1 Modern Slavery Act 2015: the introduction into English law of the criminal offences of holding a person in slavery or servitude or requiring a person to perform forced labour (absent of trafficking).

R v O [2008] EWCA Crim 2835

Court of Appeal: First successful (domestically and internationally) non-punishment criminal appeal for a trafficked child, leading to the quashing of their criminal conviction and legal and policy-related developments in favour of victims' rights protection. Led by Peter Carter KC. <https://www.bailii.org/ew/cases/EWCA/Crim/2008/2835.html>

SB (Moldova) v SSHD [2008] UKAIT 00002

Asylum and Immigration Tribunal. First successful (domestically and internationally) reported asylum appeal to recognise that former victims of trafficking are a particular social group under the Refugee Convention 1951 and that a risk of re-trafficking is a risk of persecution.

Successfully represented numerous asylum claims on behalf of victims of trafficking in unreported decisions in the lead up to this seminal case. <https://www.bailii.org/uk/cases/UKIAT/2008/00002.html>

EM v MM v Romania (2005)

(Unreported)

First successful immigration-protection claim to be granted to EU nationals in the UK, having rebutted the 'safe EU country' test in a human trafficking context. Obtaining international protection for the two sisters, who were victims of child trafficking for sexual exploitation, enabled them to apply for and achieve the first compensation awards as trafficking victims under the criminal injuries compensation scheme in England (CICA).

(Pre-2005 cases available on request)

International Advisory Roles & Policy Work

United Nations

- Member of UNODC Regional Expert Group Meetings on trafficking for enforced

criminality and trafficking of children in South Eastern Europe. Presentation given in Bosnia, 2025.

- Provided in-person expert training to prosecutors and law enforcement of 19 Latin American countries at the UNODC/Interpol/UN University first Turquesa Academy on Trafficking in Persons and Smuggling of Migrants, Costa Rica, 2024.
- Senior Legal Adviser to the UN Special Rapporteur on Trafficking in Persons 2020
- Contributor to UN reports on non-punishment 2020, 2021
- Member, UNODC Group of Experts on Trafficking 2012-2020
- Contributor to UNODC legislative guide on Trafficking in Persons and Model Legislative Provisions 2019-2020

Council of Europe

- Co-author, HELP Programme Combating Trafficking in Human Beings (2017 & 2024 current edition). 13 hours of extensive online training for all legal professionals (including judiciary, lawyers, prosecutors, law enforcement) of the Council of Europe's 46 Member States.
- Member, Council of Europe Network of Specialised Anti-Trafficking Lawyers and NGOs.

Commonwealth Parliamentary Association (CPA-UK)

- Senior Legal Adviser (2017–2024).
- Provided training to Parliamentarians from across the Commonwealth at numerous events including at the British Parliament and in Uganda; Provided expert legal advice on anti-slavery legislation across the Commonwealth.

OSCE

- Expert presentation given at the OSCE Alliance Conference 2026 on Human Trafficking for Forced Criminality.
- Contributor to OSCE report on Trafficking and Terrorism (2021).
- Advisor and Contributor to OSCE Recommendations for States on Non-Punishment (2013).

Near East South Asia (NESA) Center for Strategic Studies (Washington DC-based):

- Expert legal trainer at NESAs “Dynamics of Countering Human Trafficking in South Asia and the Gulf” Seminars.
- Provided expert legal training on human trafficking, human rights and victim protection for high-level officials of 14 Middle Eastern and South-East Asian States.
- Provided expert online training at the NESAs region-wide seminar held in Sri Lanka (2025).
- Provided expert in-person training in Oman at two NESAs region-wide seminars (2022 & 2023).

Orphanage Trafficking

Work for Lumos Foundation; Interparliamentary Taskforce on Human Trafficking; Inter-Parliamentary Union

- Drafted the Model Law Against Institutional Child Care Trafficking (2021), published by Lumos.
- Member of the US-based Interparliamentary Taskforce on Human Trafficking’s expert working group on Orphanage Trafficking.
- In this capacity, advised and contributed to the Inter-Parliamentary Union’s (180 Parliaments) landmark Resolution Against Orphanage Trafficking (Angola, October 2023).

Sports & Human Rights

- Independent Expert, Mission 89.
- Chaired high-level meetings at the UN General Assembly, New York (2022,2023), at the UN Human Rights Council, Geneva (2024), in Qatar (2025).
- Contributor to Global Thematic Report on Sport Trafficking (2024).

Legislative Advice

England and Wales:

England and Wales: Advised on areas of legislative reform under the Human Rights Bill 1997, enacted as Human Rights Act 1998, in the capacity of Independent Research Consultant for the Lord Chancellor’s Department, 1997-8.



Advised (2008-2009) on introduction into English law of the free-standing criminal offences of slavery, servitude and forced labour, enacted under s71 Coroners and Justice Act 2009, now s1 Modern Slavery Act 2015

Modern Slavery Act 2015: Member of Prime Minister's Legal Steering Committee on the Modern Slavery Bill Evidence Review (2013). Additionally, provided independent expert advice to several members of the British Parliament in the House of Lords and the House of Commons on numerous aspects of victim protection during the passage of the Modern Slavery Bill (2013-2015), enacted as the Modern Slavery Act 2015.

Scotland:

Scotland: Advised on several aspects of the Human Trafficking and Exploitation (Scotland) Act 2015.

Northern Ireland:

N. Ireland: Advised on the non-punishment provision in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

International:

Internationally: Advised on the trafficking laws of Commonwealth States as Senior Legal Advisor to the CPA-UK (2017-2024).

Inter-Parliamentary Union: provided expert advice as a Member of the Working Group on Orphanage Trafficking, contributing to the IPU's landmark Resolution Against Orphanage Trafficking, 2023.

Publications

Books

"Human Trafficking Handbook: Recognising Trafficking and Modern-Day Slavery in the UK", (LexisNexis, 2011). General Editor and expert contributor. This was the world's first multi-disciplinary textbook on human trafficking. Foreword written by Sir Nicolas Bratza, later became President of the European Court of Human Rights.

"A Guide to the Human Rights Act 1998", Butterworths, 1999. Sole author.



Council of Europe

HELP Programme E-Learning Course: “Combating Trafficking in Human Beings”. Extensive online training providing 13 hours of free legal training on human trafficking for all legal professionals of the 46 Member States of the Council of Europe

Council of Europe (2017 & current 2024 edition) — Co-author.
<https://rm.coe.int/help-course-brief-combating-trafficking-of-human-beings/16808b4f42>

United Nations Special Rapporteur on Trafficking in Persons

“Implementation of the Non-Punishment Principle”. Member of Group of Experts. Report of the Special Rapporteur on Trafficking in Persons, especially women and children, A/HRC/47/34 (UN Human Rights Council, 2021).
<https://www.ohchr.org/en/documents/thematic-reports/ahrc4734-report-implementation-non-punishment-principle>

“The Importance of Implementing the Non-Punishment Provision: The Obligation to Protect Victims” (2020). Senior legal advisor.
<https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/importance-implementing-non-punishment-provision-obligation-protect-victims>

United Nations Office on Drugs and Crime (UNODC)

Group of Experts, Member & contributor:

Issue Paper: “Abuse of a Position of Vulnerability and Other ‘Means’ within the Definition of Trafficking in Persons” (2012).

https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf

Guidance Note on Abuse of a Position of Vulnerability (2012).

https://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf

Issue Paper: “The Role of ‘Consent’ in the Trafficking in Persons Protocol” (2014).

https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf



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“Case Law Digest: Evidential Issues in Trafficking in Persons Cases” (2017).

https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf

“Countering Trafficking in Persons in Conflict Situations” (2018).

https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf

Global Report on Trafficking in Persons – Special Report “Trafficking in the Context of Armed Conflict” (2019).

https://www.unodc.org/documents/data-and-analysis/glotip/2018/GloTIP2018_BOOKLET_2_Conflict.pdf

Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (updated 2020).

https://www.unodc.org/documents/human-trafficking/2020/TiP_LegislativeGuide_Final.pdf

Model Legislative Provisions Against Trafficking in Persons (2020) [N.B. not on non-punishment].

https://www.unodc.org/documents/human-trafficking/2020/TiP_ModelLegislativeProvisions_Final.pdf

Organization for Security and Cooperation in Europe (OSCE)

“Trafficking in Human Beings and Terrorism: Where and How They Intersect” (OSCE, 2021). Contributor.

<https://cthb.osce.org/cthb/491983>

‘Policy and Legislative Recommendations for States towards the Effective Implementation of the Non-Punishment Provision with Regard to Victims of Trafficking’ (OSCE, 2013). Expert advisor and contributor.

<https://www.osce.org/sites/default/files/f/documents/6/6/101002.pdf>



Orphanage / Institutional Child-Care Trafficking

Model Law against Orphanage Trafficking: “Model Law on Institutional Child Care Trafficking for the Purpose of Financial Exploitation”. Sole author. Commissioned by Lumos and published in “Cycles of Exploitation: The Global Risks of Orphanage Care” (Lumos Foundation, 2021). The Model Law and Commentary at Annex 2, pp 101-116.

https://www.wearelumos.org/wp-content/uploads/2024/03/LUMOS_Cycles_of_exploitation_.pdf

“A Lawmaker’s Guide to Stopping Orphanage Trafficking”. Published by Inter-Parliamentary Taskforce on Human Trafficking (USA), 2024. Expert contributor.

<https://taskforceonht.org/wp-content/uploads/2024/10/ITHT-A-Practical-Guide-to-Stopping-Orphanage-Trafficking-Booklet-WEB.pdf>

“Orphanage Trafficking Legislative Toolkit”. Published by Inter-Parliamentary Taskforce on Human Trafficking (USA), 2024. Expert contributor.

<https://www.taskforceonht.org/orphanage-trafficking>

Legislators

Guide:

<https://www.taskforceonht.org/wp-content/uploads/2023/10/Orphanage-Trafficking-Legislative-Action-Summary-WEB.pdf>

Sports and Human Rights/Trafficking

“Global Thematic Report on Sport Trafficking”. Published by Mission 89, CPA-UK & Loughborough University, 2024. Independent Expert Contributor.

<https://mission89.org/wp-content/uploads/2024/12/GLOBAL-THEMATIC-REPORT-ON-SPORT-TRAFFICKING..pdf>

Parliamentary Publications (Modern Slavery Bill Evidence Review; CPA-UK;)

Expert contributor:

“Establishing Britain as a World Leader in the Fight Against Modern Slavery – Report of the Modern Slavery Bill Evidence Review”. Member of the Prime Minister’s Legal Steering Committee. Published by Centre for Social Justice & Home Office, 2013 [Precursor to the



Modern Slavery Bill 2013/Modern Slavery Act 2015].

https://www.centreforsocialjustice.org.uk/wp-content/uploads/2018/03/modern-slavery_text_final-for-web.pdf

“Legislating Against Modern Slavery, Human Trafficking and Forced Labour” – e-Handbook (Vol. I). Published by Commonwealth Parliamentary Association UK, 2018.

<https://www.uk-cpa.org/media/2375/e-handbook-legislating-against-modern-slavery-human-trafficking-and-forced-labour.pdf>

“Legislating Against Modern Slavery, Human Trafficking and Forced Labour: The Role of Parliament to Scrutinise & Raise Awareness” – e-Handbook (Vol. II). Published by Commonwealth Parliamentary Association UK, 2020.

<https://www.uk-cpa.org/media/3495/ehandbook-legislating-against-modern-slavery-human-trafficking-forced-labour-the-role-of-parliament-to-scrutinise-raise-awareness.pdf>

Education

Bar Vocational Course (Inns of Court School of Law)

Called to the Bar of England and Wales (1997)

LLM – University College London (1996); LLB (Hons.) University of London

International Diplôme in Human Rights Law (IIHR Strasbourg, 1994)

International Teaching Certificate for Universities (IIHR, Strasbourg, 1994)

Certificate of Participation (IIHR, Strasbourg, 1993)

SCHOLARSHIPS:

Hardwicke Scholarship, Lincoln’s Inn (1995)

Stage Scholarship, Lincoln’s Inn (1996)

Pegasus Scholarship, Joint Inns of Court (1999)

WORK PLACEMENTS:

UN International Criminal Tribunal for the Former Yugoslavia (ICTY), Office of the Prosecutor (1999)

Research Consultant in Human Rights, King's College London (1997)

Independent Legal Advisor to the Lord Chancellor's Department on the Human Rights Bill (1997)

INTERNSHIPS:

UNHCR London (1997)

European Commission for Human Rights, Strasbourg (1996)

AIRE Centre (1995–96)

British Institute of Human Rights (1994–96)

Awards

Trafficking in Persons Hero Award (US Government/Obama Administration, 2015)



Barrister of the Year (Law Society Excellence Awards, 2008)

Lifetime Achievement Award Finalist (Society of Asian Lawyers (SAL), 2024)

Outstanding Contribution Award (British Nigeria Law Forum, 2021)

Outstanding Achievement in Academia Award (BRISLA Awards, 2019)

Human Rights Lawyer of the Year (SAL, 2009)

Woman of Achievement (Woman of the Year Awards, 2009)

Recipient of Diplôme of the International Institute of Human Rights (IIHR, Strasbourg, 1994)

Publications

The Court of Appeal provides guidance on prosecuting victims of trafficking

Stephen Knight appeared on behalf of AAI, and Parosha Chandran appeared on behalf of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, Intervening. This article was written by One Pump Court pupils Margo Munro Kerr and Sarah-Jane Ewart.

The Court of Appeal has today handed down a lengthy decision which is essential reading for all criminal practitioners. In the linked cases of *R v AAD, AAH, and AAI* [2022] EWCA Crim 106, the Court of Appeal has given guidance on the defences available to victims of trafficking and modern slavery who are accused of criminal offences.

This article assumes prior knowledge of the decision in *R v Brecani* [2021] EWCA Crim 731 (19 May 2021). If you need an explainer or refresher we recommend reading this article first.

??The Court of Appeal has upheld *Brecani* but provided important guidance regarding abuse of process where a decision is made to prosecute a victim of trafficking.

The appeals of AAD, AAH, and AAI were joined so that the Court could provide guidance in a Special Court. All three appellants had been convicted of criminal offences prior to being recognised as victims of trafficking: AAI in 2008, AAH in 2016 (after entering a guilty plea), and AAD in 2018. They appealed on a range of grounds, all with the effect of arguing that had they received the positive conclusive grounds decision prior to trial, or had the fact and extent of their being trafficked been accepted at the time of being charged, or at trial (or in the case of AAH when she was advised to enter a guilty plea), then they would not have been convicted. Permission was granted to AAI and AAH to appeal out of time.

The nine overarching issues

Prior to considering the grounds of appeal, the court considered nine overarching issues



relating to trafficking in criminal trials.

(i) Is a Single Competent Authority (“SCA”) conclusive grounds decision admissible on appeal? [¶¶ 79 – 89]

The answer to this was a resounding “yes”: although not admissible at trial following *Brecani*, it is admissible for the purposes of reviewing whether a conviction is safe.

In *Brecani* the Court had held that SCA decisions were inadmissible at trial. In the course of answering this, the Court considered whether the effect of *Brecani* was that a suitably qualified expert in trafficking could give evidence at trial instead. The Court held that an expert could only be instructed to answer questions outside of the knowledge or remit of the jury, “for instance as to the defendant’s psychiatric or psychological state or the detailed mores of people trafficking gangs operating in countries that are outside the court’s own knowledge and experience” [¶87]. However, where the expert’s evidence strays into questions of fact for the jury to decide, it is inadmissible [¶86]. Examples given are the plausibility and consistency of a defendant’s account, the vulnerability of a defendant, and whether a given set of facts meets the legal definition of trafficking [¶86].

(ii) Is the decision in *Brecani* consistent with the previous authorities of the Court of Appeal Criminal Division (“CACD”)? [¶¶90 – 100]

The Court found that *Brecani* was consistent with previous authorities.

The Court was invited to consider *JXP* [2019] EWCA Crim 1280, which was not cited in *Brecani*, and in which the court observed at [¶ 54] that the competent authority is “a specialist authority with particular expertise and knowledge in this area of trafficking”. The Court stated that *Brecani* was not inconsistent with *JXP*, finding that in *JXP*, limited weight had been placed on the decision of the SCA, as there were a number of other sources of evidence of trafficking including evidence of an expert psychiatrist and psychologist [¶¶ 90-92].

The Court was further invited to consider *R v L(C)* [2013] EWCA Crim 991; [2013] 2 Cr App R 23, in which it was observed at ¶ 28 that:

“Whether the concluded decision of the competent authority is favourable or adverse to the individual it will have been made by an authority vested with the responsibility for investigating these issues, and although the court is not bound by the decision, unless there is evidence to contradict it, or significant evidence that was not considered, it is likely that the criminal courts



will abide by it.”

The Court stated that *Brecani* was not in conflict with *LC*, because, whereas in *Brecani* the Court addressed the admissibility of evidence at trial, in *LC*, the Court addressed “the level of protection from prosecution or punishment for trafficked victims who have been compelled to commit criminal offences, in the context of a prosecutorial decision to proceed with the trial” [¶ 94]. In *LC*, a decision reached before the Modern Slavery Act 2015 (“the 2015 Act”), it was stated that the decision of the SCA was admissible in determining whether a decision to prosecute was an abuse of process; no determination was made about its admissibility before a jury.

Finally, the Court was invited to consider whether the decision in *Brecani* was inconsistent with the decision in *Rogers v Hoyle* [2014] EWCA (Civ) 257; [2015] QB 265, a civil case concerning the admissibility of a report by the Air Accident Investigation Branch of the Department of Transport which contained evidence of the opinions of experts on technical matters. The Court drew a distinction between opinions on technical matters and questions of fact. It also observed at ¶ 100 that:

“*Rogers v Hoyle* nonetheless serves to highlight one of the substantial differences between civil and criminal proceedings, given a professional judge can readily distinguish between weight and admissibility in a manner that would be far more difficult for a jury”.

(iii) Is the decision in *Brecani* consistent with the UK’s international obligations and European case law with regard to the protection of victims of trafficking? [¶¶ 101-104]

The Court was particularly invited to consider the Strasbourg case *VCL & AN*, App. Nos 77587 and 74603/12, 16 February 2021, which concerned prosecution of trafficked individuals for cannabis farming. The Court distinguished the issue: *Brecani*, it repeated, was about admissibility of evidence *only*, not about the way that the CPS prosecutes. However, it revisited *VCL* when considering whether it was still possible to argue that a prosecution of a victim of trafficking was an abuse of process (see issue 7 below).

(iv) Is the court able to give further guidance vis-à-vis the observation in *Brecani* (at [58]) that expert evidence on the question of trafficking and exploitation may be admissible at trial, “particularly to provide context of a cultural nature [...]” or “of societal and contextual factors outside the ordinary experience of the jury”? [¶¶ 105-106]

The Court said that it had explained this issue above, at ¶¶ 86 and 87.

(v) When on an appeal might it be appropriate or necessary for witnesses (appellant, expert, trial representative etc.) to be required to attend to give evidence relating to whether the appellant was trafficked in victim of trafficking cases? [¶¶ 107-108]

The Court stated that it had already considered the issue at ¶¶ 82 and 84. It did not find that it would necessarily in all cases be contrary to the purpose of protection to call a defendant to give evidence that may be re-traumatising, stating at ¶ 108:

“R v AAJ demonstrates that there will be appeals when it will be wholly unnecessary for oral evidence to be adduced. However, if the suggested trafficking is based, for instance, on unsatisfactory and untested hearsay evidence from the appellant, the court may express the view that it would be preferable for the appellant to give evidence for the proper resolution of the issues on the appeal, thereby enabling his or her account to be appropriately tested.”

(vi) When the parties disagree, to what extent and at what stage might the court properly be involved in the question of whether live evidence is to be called? [¶109]

The court answered this briefly: the question of whether live evidence should be called is squarely a matter for the court, with due regard to submissions from the parties, depending on what is “necessary or expedient in the interests of justice.”

Parties are instructed to inform the Criminal Appeal Office in good time if they have agreed (or not) on whether oral evidence is not required, so that the court can confirm or reject this, and make directions accordingly.

(vii) Is it still possible to argue on appeal that the prosecution of a victim of trafficking was an abuse of process? [¶¶ 110-143]

This question is reviewed at length by the court and the answer is, emphatically, yes (though in prescribed circumstances).

The Court reiterated the three-stage test for prosecutors arising out of *R v M(L)* [2011] EWCA Crim 2327; [2011] 1 Cr App R 12, and substantively reviewed the pre-2015 authorities on abuse of process in this context [¶¶110-114].

As to whether this residual jurisdiction survives the 2015 Act: “absent any authority to the contrary, it is difficult to see why it should not” [¶116]. The Court set out that the abuse of process jurisdiction complements and supplements the defence under section 45 of the 2015 Act, and went further to say that it may better “preserve the obligations in the Convention and Directive, which extend not only to victims of trafficking not being punished but also, in



appropriate cases, to not being prosecuted”. If the abuse of process jurisdiction has been described as special or unusual when evoked in a case involving a victim of trafficking, the Court says that can only be because abuse of process applications must take into account the relevant context, which here includes a framework of international obligations [c.f. ¶117].

The uncontroversial principles of abuse of process jurisdiction are variously re-stated: a decision to prosecute is for the CPS, not for the courts; and disputes of fact are for the jury. Where the CPS has taken into account relevant prosecutorial guidance, and provided a “rational basis” for departing from a positive conclusive grounds decision, there will likely be no successful abuse argument and there may be a wasted costs order.

Helpfully, however, the corollary of that position is stated at ¶120:

“But what if the CPS has failed unjustifiably to take into account the CPS Guidance or what if it has no rational basis for departing from a favourable conclusive grounds decision? [...] in principle such a scenario would, on ordinary public law grounds, seem to operate to vitiate that prosecution decision: whether by reason of a failure to take a material matter (viz. the CPS prosecution guidance) into account or by making a decision to prosecute which is properly to be styled as irrational. Consequently, such a prosecution may, in an appropriate case, be stayed.”

In reaching this conclusion the Court reviewed, and departed from, the decisions in *DS* [2020] EWCA Crim 285; [2021] 1 WLR 303 and *A* [2020] EWCA Crim 1408. In particular the Court was critical of the observations in *DS* [¶ 42] that if there is no sound evidential basis on which to challenge the conclusive grounds decision, then “it will still not be an abuse of process, but the judge will consider any submission that there is no case to answer”. That, the court says, is clearly wrong, and the abuse jurisdiction should be available as legal redress in the event that the CPS fails to follow their own guidance.

Finally, and perhaps decisively, the Court accepted that *DS* and *A* have been superseded by *VCL & AN*. The ECtHR in *VCL & AN* emphasised that, given that the prosecution of victims of trafficking “may be at odds with the state’s duty to take operational measures to protect them” [¶ 159], a prosecutor must have “clear reasons which are consistent with the definition of trafficking contained in the Palermo Protocol and the Anti-Trafficking Convention” to depart from a decision by the competent authority [¶ 162]. The Court of Appeal equated the ECtHR’s “clear reasons” requirement with the “rational basis” in *M(L)* and *Joseph*, and rejected “the



dictum in *DS* to the effect that there can be no abuse of process even where there is no sound evidential (that is, rational) basis for a prosecutorial departure from a conclusive grounds decision favourable to a defendant” [¶ 140].

The various threads on abuse of process are summarised, perhaps most conveniently for practitioners, at [¶ 142] of the judgement.

(viii) Is the definition of “*compulsion*” as set out in *VSJ* [2017] EWCA Crim 36 at [¶ 21] and s. 45 of the 2015 Act too narrow? [¶¶ 144-154]

This issue considered whether the test is currently whether a victim of trafficking has been *compelled* to offend, and if this should be inverted to ask whether the offending was *caused* by the traffickers.

The Court rejected this argument, tracing the concept of “*compulsion*” back through the international instruments [¶¶ 145-152]. The Court found that the legal concepts of *compulsion* and *causation* are too distinct to be reconciled in the way proposed, and suggested that broadening the concept would amount to a wholesale re-writing of the statute. However, the Court did not give further guidance on precisely what “*compulsion*” means, and a broad reading, which stops short of causation, should still be possible.

(ix) Can a victim of trafficking seek to argue that a conviction following a guilty plea is unsafe? [¶¶ 155-157]

Where a defendant has pleaded guilty and subsequently been found to be a victim of trafficking, the Court cited the very recent case of *R v Tredget* [2022] EWCA Criminal 108, which identified three non-exhaustive categories of case where a Court may overturn a guilty plea:

1. Where the defendant was deprived of a defence that was good in law. Examples given include: a plea of guilty made after an incorrect ruling that deprived the defendant of an arguable defence; under improper pressure, either from the judge, or as a result of coercion or threats; after incorrect legal advice, including failure to advise on a possible defence; and, interestingly, as a result of a delusion while under the influence of LSD.
2. In cases of abuse of process, where there is an injustice that operates so that it was not just to try the defendant at all. The Court in *Tredget* quoted *Asiedu v R* [2015] EWCA Crim 714 at ¶ 21 to say “a conviction upon a plea of guilty is as unsafe as one following trial”. Examples include entrapment, or where it transpires there was not a fair and



impartial tribunal (c.f. *R v Abdroikov*, *R v Green*, *R v Williamson* [2007] UKHL 37).

3. Where the admission of guilt was not true, and the defendant did not commit the crime at all.

The Court provided no commentary on whether most cases involving victims of trafficking would arise out of the first category, and the subsequent availability of the s. 45 defence; presumably, all three could conceivably arise in a victim of trafficking context. The Court did however consider the question in respect of AAH, whose appeal following a guilty plea was found to be unsafe (see below).

The individual appeals

Following consideration of the nine overarching issues, the Court went on to consider the appeals of AAI, AAH and AAD individually.

The Court allowed AAH's appeal against conviction [¶¶ 172-176], stating:

"We are confident that if these two decisions had been available to the prosecution, in light of our answer to the third question, a decision would have been taken not to prosecute the appellant; alternatively, the appellant would have been able to mount a successful submission of abuse of process on the basis that there are no substantive grounds to dispute that the appellant is a victim of trafficking, that there was sufficient nexus between that status and the offending and that there is uncontradicted evidence of real compulsion" [¶ 174].

However, the Court rejected both AAI's and AAD's appeals against conviction, finding that their accounts of being trafficked were not credible. This led the Court to conclude that the decision to prosecute each was not an abuse of process [¶¶ 158-159 and 179-181]. Moreover, the Court concluded that AAI did not have a reasonable excuse for committing the offence of which he had been convicted [¶¶ 160-167], and that AAD would not have been able to secure an acquittal through the s45 defence, because he was not "compelled" to commit the offence [¶¶ 182-183].

The Court did allow AAI's (but not AAD's) appeal against sentence, reducing the custodial term from 18 months to 12 months [¶¶ 168-169]. However, this is of little help to AAI given that he has already served his sentence, and a 12-month sentence will continue to have adverse consequences for his immigration position.



Conclusion

Overall, this case provides an essential reference for all practitioners considering the prosecution of potential victims of trafficking. The restoration of the abuse of process jurisdiction in these cases fixes an error in the law, which became apparent as a result of the ECtHR case of VCL & AN. It will hopefully limit the criminalisation of victims of trafficking and help in allowing them to avoid prosecution, and rebuild their lives.

