Sarah-Jane Ewart

Call: 2021
Specialist in:

- Criminal Law
- Prison Law
- Family Law – Private
- Family Law – Public
- Modern Slavery & Trafficking Team

Experience

SJ is a busy criminal defence and family law barrister. She has a specialism working with particularly vulnerable clients.

Protest and General Crime
SJ is regularly instructed to defend across all areas of criminal law, in the Crown Court, Magistrates' Court and Youth Court. Her experience spans serious violence (including domestic abuse and sexual offences) and drug-related crime, including cases involving a modern slavery and trafficking element.

SJ has developed a successful specialist practice in protest law. She is regularly instructed on behalf of Defendants accused of crimes in the exercise of their protest rights, particularly for groups such as Palestine Action, Just Stop Oil, Animal Rebellion and Extinction Rebellion. This includes complex conspiracy charges and cases involving high-level criminal damage, public nuisance, obstructing a highway, aggravated trespass, and protest offences alleged to have a terrorist connection

Family Law
SJ is an experienced family law barrister with a broad practice across private children's law and public law. She accepts instructions in a wide range of family law matters and has particular expertise in cases involving domestic abuse and sexual violence allegations owing to her history of working with complainants. She is frequently praised for her exceptional client care.

SJ has experience with judicial review and public law work. Prior to coming to the bar, SJ worked on strategic litigation as a paralegal at Centre for Women's Justice (CWJ). She undertook legal/policy work relating to the criminal justice system, including challenging the criminalisation of sexual or domestic abuse survivors on behalf of women charged with assaulting violent partners, or convicted of sex work offences. She helped draft a Communication to CEDAW on the prosecution of women for making false allegations of rape.

She worked closely on a number of judicial reviews against the police and CPS, including: EVAW v DPP [2021] EWCA Civ 350, relating to the CPS' approach to rape prosecution; Emily Hunt's challenge on the definition of voyeurism; and a JR against the policy of disproportionate downloads of rape complainants' personal data. SJ gained experience working on Human Rights Act claims, in particular those arising out of child sexual exploitation. She also assisted CWJ as a core participant to the Independent Inquiry into Child Sexual Abuse.

Before coming to the Bar, SJ worked and taught in a fellowship position at the Asian University for Women in Chittagong, Bangladesh.

What the directories say

"I felt truly represented in the court and so taken care of inside and outside the court room […] knowing you will be there and representing me makes me feel as confident as I possibly could be."

"You have been amazing and I will always be eternally grateful. Keep up the good work"

Education

BPTC/LLM, City Law School (Very Competent)

Graduate Diploma in Law, City Law School (Commendation)

BA English Literature, University of Cambridge (First Class)

Awards

Coram Special Prize for Advocacy, LSE Featherstone LGBT Moot

City Law School Scholarships (GDL and BPTC)

Exhibition Award, Inner Temple (GDL and BPTC)

Robin Hammond Prize, Murray Edwards College, University of Cambridge

William Wood Award, Gordonstoun School

Cases

Sarah-Jane Ewart and Meghan Curran represented two Defendants in trial for their involvement in a direct action on Rokeby's Venus at the National Gallery

Sarah-Jane Ewart and Meghan Curran represented two Defendants in trial for their involvement in a direct action on Rokeby's Venus at the National Gallery in November 2023. At the time, the Defendants were members of Just Stop Oil. The action received significant press attention at the time, which you can read here.

Following a week-long trial, the jury could not reach a verdict concerning the single charge of criminal damage relating to the painting. The jury were told by the Defendants that they had damaged the glass of the frame of the painting to protest the urgency of the climate crisis, believing the public would consent to their actions.

The painting was previously targeted by suffragette Mary Richardson in 1914 in protest at the treatment of Emmeline Pankhurst.

Both barristers were instructed by Peter Baker of ITN Solicitors.

Palestine Action activists acquitted of criminal damage at Canterbury Crown Court

Savannah Sevenzo, Sarah-Jane Ewart and Ciara Moran successfully represented three defendants charged with criminal damage to a weapons manufacturer in Kent.

Following legal argument, the Judge allowed the defence of the protection of property to be left to the jury, and so the Defendants could rely on their motivations to prevent criminal damage and war crimes arising out of property damage in Gaza.

They were instructed by Peter Baker of ITN Solicitors, and acted alongside Audrey Cherryl Mogan and Lee Sergent of Garden Court.

Convictions overturned for student pro-Palestine protestors

Sarah-Jane Ewart, Margo Munro Kerr and Megan Curran successfully overturn convictions of student pro-Palestine protestors who protested at the University of Leicester.

10 pro-Palestine protestors were convicted of aggravated trespass in the Magistrates' Court. The defendants argued that they had rights of access, as protestors and/or as students at their own university, and that they were permitted to occupy a building on 14 November 2024. The District Judge found he could not be sure they were not trespassers. One co-defendant was acquitted.

The 10 convicted protestors appealed their convictions to the Crown Court. Following joint legal submissions by their legal team, the Crown conceded the appeal.

It was noted in Court that an important point of consideration was the disproportionate impact of the prosecution on the students, who were young people of good character.

The case raised important issues around students' freedom of expression.

Coverage of the case can be found via Dazed and Liberty.

SJ, Margo and Meghan were all instructed by Sophia Dutton of Kellys Solicitors. Co-defendants were represented by Nicola Hall at Robert Lizars.

For more information, or to instruct Margo, SJ or Meghan, please contact our clerks at clerks@onepumpcourt.co.uk.

Not guilty verdicts secured in Palestine Action case

On what would have been day 1 of trial, the Prosecution offered no evidence at Southwark Crown Court.

Maria Liddiard, Sarah-Jane Ewart and Meghan Curran were instructed for trial on behalf of the defendants who were accused of committing criminal damage and locking on as part of a protest with Palestine Action, prior to the group's proscription in June 2025.

After service of skeleton arguments, two of the Crown's witnesses withdrew their support for the prosecution. In the circumstances, and citing the defendants' reliance on defences under section 5 Criminal Damage act 1971, the Crown considered there was no longer a realistic prospect of conviction.

Not Guilty verdicts were entered in respect of the Criminal Damage counts, and associated Locking On charges were discontinued.

Maria was instructed by Simon Natas at ITN Solicitors.

SJ was instructed by Isabelle Standen at Kelly's Solicitors.

Meghan was instructed by Peter Baker, also at ITN Solicitors.

For more information, or to instruct Maria, SJ or Meghan, please contact our clerks at clerks@onepumpcourt.co.uk.

Appeal in an obstruct highway case

Sarah-Jane Ewart successfully represented a protestor in an appeal against a conviction for wilfully obstructing a highway, arising out of a slow march protest for Just Stop Oil. SJ made proportionality arguments and submissions on the public interest. In the end the prosecution conceded the appeal.

SJ was instructed by Adeela Khan and Marilyn White at Commons Legal.

Appeal in a hunt monitor case

Sarah-Jane Ewart successfully represented a hunt monitor charged with aggravated trespass after he contended he was disrupting an illegal fox hunt. The defendant was convicted in the magistrates court. After submissions made, the prosecution conceded the appeal in the Crown Court.

SJ was instructed by Sophia Dutton at Kelly's Solicitors.

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 should 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.