

# Modern Slavery: Defending Vulnerable Clients



DGLE<sup>LEGAL</sup>

15<sup>th</sup> February 2021

# Presenters

---

## **Zara Walker | Barrister | Garden Court North Chambers**

Zara predominantly practices in the area of criminal law. She also accepts instructions in other areas which complement her criminal practice, including International Human Rights and International Criminal Law, Prison Law and Inquest work.

To view Zara's full bio, please visit: <https://gcnchambers.co.uk/barrister/zara-walker/>

## **Rebecca Filletti | Barrister | Garden Court North Chambers**

Rebecca specialises in criminal defence and has acted as counsel to defendants accused of the most serious criminal offences including murder, manslaughter, rape, historic sexual allegations, child cruelty, drug offences, fraud and offences relating to serious violence and firearms.

To view Rebecca's full bio, please visit: <https://gcnchambers.co.uk/barrister/rebecca-filletti/>



# Agenda

---

- Welcome and Introduction
- Referrals under the National Referral Mechanism
- Defences:
  - Duress
  - S45 Modern Slavery Act
- Concluding thoughts

# The components of modern slavery

---

## Human trafficking

-  Action
-  Means
-  Purpose of exploitation

## Slavery, servitude and forced or compulsory labour

-  Means
-  Service

# What is modern slavery?

---

- Modern slavery is a complex crime and may involve multiple forms of exploitation
- Government Guidance specifically observes that victims may not be aware that they are being trafficked or exploited, and may have consented to elements of their exploitation, or accepted their situation
- To determine whether a child is held in slavery or forced labour, regard may be had to all of the circumstances
- County Lines operations have become the most common form of ‘Child Criminal Exploitation’ in the UK

# What is the National Referral Mechanism?

---

- The NRM is a framework for identifying and referring potential victims of modern slavery and ensuring that they receive the appropriate support
- Single framework centred on multi-agency approach to victim identification and referral to appropriate support
- Role of First responders and their obligations as of 1<sup>st</sup> November 2015
- Responsibilities of First responder organisations
- Government Guidance imposes a responsibility that if there are concerns, the matter should be referred to the NRM
- An NRM referral **should always be made** unless the law enforcement agency is in possession of clear and sufficient evidence to prove that the suspect is not a victim of trafficking/ slavery

# How does the NRM process work?

---

- Consent required
- The SCA will make a “Reasonable Grounds” decision
- Impacts of a positive “Reasonable Grounds” decision
- Support available for victim
- Journey to reach a “Conclusive Grounds” decision

# Admissibility of a positive CG decision

---

- Leading Case *DPP v M [2020] EWHC 3422*
- The High Court considered two separate issues:
  - Whether the decision minute of the SCA is admissible in criminal proceedings
  - What evidential weight that decision has
- The case provides substantial guidance as to how the NRM decision should be approached in criminal proceedings

But what happens if there is a negative conclusive grounds decision?

# Duress v Modern Slavery Defence

---

- Defendant have always been able to rely on the defence of duress
- Necessary to consider the principles in *R v Fitzpatrick [1977] N.I.L.R 20*
- “if a person, by joining an illegal organisation or a similar group of people with criminal objectives and coercive methods, voluntarily exposes and submits himself to illegal compulsion, he cannot rely on the duress to which he has voluntarily exposed himself as an excuse either in respect of the crimes he commits against his will or in respect of his continued but unwilling association with those capable of exercising upon him the duress which he calls in aid”
- Modern Slavery Act now provides a defence in circumstances where the individual has been the subject of ‘exploitation’

# s.45 Modern Slavery Act

---

- (1) A person is not guilty of an offence if—
  - (a) the person is **aged 18 or over** when the person does the act which constitutes the offence,
  - (b) the person does that act because the person is **compelled** to do it,
  - (c) **the compulsion is attributable to slavery or to relevant exploitation**, and
  - (d) **a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative** to doing that act.
- (2) A person may be compelled to do something **by another person or by the person's circumstances**.
- (3) Compulsion is attributable to slavery or to relevant exploitation only if—
  - (a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or
  - (b) it is a direct consequence of a person being, or having been, a victim of slavery or a victim of relevant exploitation.
- (4) A person is **not guilty** of an offence if—
  - (a) the person is **under the age of 18** when the person does the act which constitutes the offence,
  - (b) the person does that act as a **direct consequence** of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
  - (c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.
- (5) For the purposes of this section—
  - “relevant characteristics” means age, sex and any physical or mental illness or disability;
  - “relevant exploitation” is exploitation (within the meaning of section 3) that is attributable to the exploited person being, or having been, a victim of human trafficking.
- (6) In this section references to an act include an omission.

# s.45 Modern Slavery Act

---

- This is a full defence
- Evidential burden on the Defendant before reverting to the usual criminal standard
- R v MK [2018] EWCA Crim 667
- R v K,W,A [2018] EWCA Crim 1432; *“The Prosecution does not need to prove a lack of consent on the part of the young courier or any element of coercion. Any such suggestion must be defeated by (i) the agreed position of all defendants that consent is no defence (as per s2(3) of the Modern Slavery Act 2015) (ii) the protective purpose of the legislation and (iii) the fact that the concept of ‘choice’ assumes the willingness of the chosen. “*

# Applying s.45

---

- In respect of a child i.e. somebody under 18 at the time the offence was committed it is necessary to show that:
  - The offence was committed as a direct consequence of the person being, or having been a victim of slavery or a victim of exploitation, and
  - A reasonable person in the same situation as the person and having the person's relevant characteristics would do that act
- Children will not be expected to provide an account of exploitation even in circumstances where the Crown seek to prosecute Defendants for Child Trafficking Offences

# What is a relevant characteristic?

---

- S45(5) Modern Slavery Act

- *'age, sex and **any** physical or mental illness or disability'*

# How does s.45 apply to adults?

---

- The defence is slightly more difficult to establish
- Also requires that the defendant committed the offence because they were **compelled** to do so

# Concluding thoughts

---

- How can awareness of the NRM mechanism impact advice given at the Police Station
- As highlighted in DPP v M [2020] – representations to the CPS following a positive “CG” decision are extremely important
- Reminder that the CPS have an ongoing duty to disclosure up until appeal
- If you are concerned you need to flag it

# Contact details

---



**T.** 0161 817 6377

**E.** [gcn@gcnchambers.co.uk](mailto:gcn@gcnchambers.co.uk)

**W.** <https://gcnchambers.co.uk/>



# Any Questions?

# Thanks for watching!

David Gilmore | Director

M: 07779 713 886

T: 01509 214 999

E: [david@dglegal.co.uk](mailto:david@dglegal.co.uk)

