

Decision not to prosecute alleged human trafficking quashed

09 July 2020



Ben Douglas-Jones QC represented a putative victim of human trafficking, L, in a rare successful challenge to a CPS decision not to prosecute her alleged traffickers.

The Divisional Court decided that the Crown Prosecution Service's decision not to prosecute a former diplomat and his wife who are alleged to have exploited L by forcing her to work excessive hours for very little pay was unlawful.

L was a domestic worker who had emigrated on the promise of domestic work with adequate pay and reasonable hours. Instead she was forced to work excessive hours for very little pay, and had little option but to do so. Eventually she escaped and sought help. She was referred via the National Referral Mechanism for victims of trafficking by the specialist domestic worker charity, Kalayaan, and the Home Office then identified her as a victim of trafficking.

The police initially refused to investigate, claiming that the perpetrators had diplomatic immunity.

The CPS refused to prosecute as they did not consider that L was exploited, and after pursuing the Victims Right to Review process L applied for judicial review of the CPS's decision.

Permission to apply for judicial review was granted in April, and the full hearing took place on 1 July 2020 before a Divisional Court (comprising Lord Justice Hickinbottom and Mr Justice Sweeney).

The case included the following points of law:

1. When considering the meaning of human trafficking under s.4(4)(c) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and s.2 of the Modern Slavery Act 2015 (by virtue of exploitation as defined in s.3(5)) a breach of Art 4 ECHR is not necessary and deception as to the level of pay or hours to be worked by an exploited worker may suffice.
2. The high margin of appreciation afforded to prosecutorial decision-makers (see *DPP ex parte C* [1995] 1 Cr. App. R. 136; *R (Corner House Research) v SFO* [2009] 1 AC 756; *L v DPP* [2013] EWHC 1752 (Admin) and *R v DPP ex parte Manning* [2001] QB 330) does not apply where the wrong legal framework is used in the decision-making process.
3. The High Court must refuse to grant (1) permission to appeal or (2) relief on an application for judicial review if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred (s.31(2A) and 31(3D), Senior Courts Act 1981, respectively). While the test is the same, the decision made at the permission stage at an oral application is "not determinative nor even relevant to the decision [the Divisional Court] has to take".

The case received widespread news coverage: The Guardian.

Ben, who led Chris Buttler of Matrix, was instructed by Zubier Yazdani and Ralitsa Peykova of Deighton Pierce Glynn.