5 PAPER BUILDINGS

Importance of vulnerability and imbalance of power in modern slavery cases and section 4, Fraud Act 2006

17 March 2022

Ben Douglas-Jones QC, leading Chris Buttler QC and Katy Sheridan (both of Matrix) appeared for the claimant in R (on the application of L) v DPP [2022] EWHC 601 (Admin), a further successful JR of the DPP's decision not to prosecute a UAE diplomat and his wife for offences relating to modern slavery (see R (on the application of L) v DPP [2020] EWHC 1815 (Admin)).

One of the possible offences considered was fraud by abuse of position, contrary to section 1 in breach of section 4 of the Fraud Act 2006.

The DPP's analysis of the law concluded that the offence would be committed "… where the suspect occupies a position in which he was expected to safeguard, or not to act against, the financial interests of another person and abused that position, dishonestly, intending by that abuse to make a gain/cause a loss. That is not the case in relation to employer and employee."

The Court concluded that the DPP had erred in law. It was possible for an employer to occupy a position in which he was expected to safeguard, or not to act against, the financial interests of an employee. The Court summarised its finding as follows (at [42]):

In short, this was not simply a relationship of employer and employee: it was a particular relationship in which not only the question of employment, but also the provision of accommodation, and most pertinently the dependency of her immigration status in the UK on her sponsor and continued employment were integral elements of their relationship. The potential for exploitation in these circumstances was clear and these were features well beyond the simple relationship of employer and employee clearly capable of giving rise to an expectation of the kind envisaged in section 4 of the 2006 Act.

The Court also found that the DPP's assessment of the credibility of the claimant's account was so flawed and riddled with error and misconception that it was incapable of withstanding scrutiny and was therefore unlawful.

The Court was satisfied that this was "… one of the very limited number of cases where there is a clear-cut basis for concluding the defendant erred in law" [62].

The Court did not need to consider whether a heightened standard of scrutiny (anxious scrutiny) applied.