



Human Rights Update

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1. Human Trafficking
2. Client/Lawyer Privilege

Human Trafficking

- The scale of the problem -
- Statement by National Crime Agency 10/8/17
<http://www.nationalcrimeagency.gov.uk/news/1171-law-enforcement-steps-up-response-to-modern-slavery>
- How have we arrived here since *The Somerset Case* (1772) ?



Contributory factors

- Refugees from war and natural disasters
- The failure of states to fulfil their obligations towards refugees
- The lure of developed countries to those who live in poverty in the third world
- Access to money for the traffickers – the links between trafficking and other types of trans-national organised crime including corruption
- The vulnerability of victims



Victims

- States & the media often treat them as economic migrants
- The UK has an undistinguished history
- The slow response of courts to the reality –
- *R v. N and Le* [2012] EWCA Crim 189;
- *L and others v. R* [2013] EWCA Crim 991;
- *R v. M(L) and others* [2010] EWCA Crim 2327.
- States are unwilling to grant residence status except temporarily for the purposes of a prosecution



Victims

- How do our courts respond now?
- Modern Slavery Act 2015 – a good but inadequate response
- Cf Joint Parliamentary Committee report
- Immunity from prosecution for victims – s.45 and *R v Joseph* [2017] EWCA Crim 36
- Why are victims of trafficking treated differently from victims of sexual crimes?
- The problem of consistency in a victim's account



Supply Chains & International Trade

- Part 6 (s.54) of the Modern Slavery Act 2015.
- Transparency in Supply Chains Regulations 2015
- Confined to commercial organisations with an annual turnover of £36m
- Attempt in November 2016 by members of the House of Lords to extend the obligation to public bodies failed.
- Are these sensible limitations – or should the prohibition on trafficking mirror the Bribery Act?
- Response of major UK companies



Client/Lawyer Privilege

- The problem of disclosure in the case of a victim of trafficking is one example of the dilemma posed by legal professional privilege.
- Whose privilege?
- Why?
- What are the problems?



Client/Lawyer Privilege

- Investigatory Powers Act - deliberate inroads even when the state has a commercial or forensic interest of its own
- The powers of the judicial commissioners
- *SFO v ENRC* [2017] EWHC 1017 (QB) – internal company investigations
- The difference between
 - advice privilege and
 - litigation privilege
- Are any secrets safe from the state?

