



# Case Update: *R v Forte* [2020]

The Rights of Non-Parties in Confiscation Proceedings

NICHOLAS HALL

# NRM Process

- ◆ Referral

- ◆ Police Staff, Local Authority, Non-Governmental Organisations i.e Salvation Army,

- ◆ Positive Grounds Decision

- ◆ *“I suspect but cannot prove Mr X of Modern Slavery”*

- ◆ Conclusive Grounds Decision

- ◆ *“On the balance of probabilities it is accepted that Mr X was a victim of modern slavery in the UK this time period for the specific purposes of forced criminality”*



# CPS Decision

- ◆ Letter of Representations
- ◆ Required to reconsider in light of the decision.
- ◆ *R v DS* [2020] EWCA Crim 285 – discretion to prosecute.
- ◆ General trend to prosecute.





# The Defence- S45 MSA 2015

Adults S45(1)	Children s 45(4)
Over 18 when person does the act which constitutes the offence	Under 18 when person does the act which constitutes the offence
The person does that act because the person is compelled to do it	-
The compulsion is attributable to slavery or relevant exploitation (defined s45(3))	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.
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.	A reasonable person in the same situation as the person and having the persons relevant characteristics would do that act.





# CPS Guidance

- ◇ <https://www.cps.gov.uk/legal-guidance/human-trafficking-smuggling-and-slavery>
- ◇ The disclosure package supplied by the SCA to the police will also contain a generic s.9 statement which sets out, in uncontroversial terms, the role and function of the SCA. This statement should be served as part of the prosecution case and, whenever possible, agreed with the defence. Its purpose is to contextualise the NRM decision by informing the defence, magistrates, judges and juries of how the NRM operates and the evidential standard that SCA decision makers apply when reaching reasonable grounds and conclusive grounds decisions.
- ◇ CPS argument: Opinion evidence of one individual.



# NRM Decision's Admissibility

## ◆ R v DS [2020] EWCA Crim 285

41. That is enough to dispose of this appeal, but some other issues were fully canvassed in argument and we should refer to some of them...

42. *Under the 2015 Act, the prosecutor is entitled to challenge that Conclusive Grounds decision before the jury in seeking to rebut the statutory defence and to invite the jury to come to a different decision. If there is a sound evidential basis on which to do this, it will not be an abuse of process to try. If there is not, it will still not be an abuse of process, but the Judge will consider any submission that there is no case to answer. Whether or not a child is in fact a Victim of Trafficking is a matter which the jury is required to consider under [section 45\(4\)\(b\)](#). This is an issue which they will have to consider on all properly admissible evidence, which may include the evidence of the defendant or, if he does not give evidence, may, if appropriate, include an adverse inference.*

43. *Whether the decision of the Authority is admissible at all before the jury is an issue which has been briefly canvassed before us, but we do not think it is right for us to express any view...*





# *R v GS [2018] EWCA Crim 1824*

*“69. Before us, no question arises as to the admissibility of these materials as such. That is not the case as to their admissibility at trial, where, to put it no higher, the admissibility of both the decisions in question and the underlying reasoning must be regarded as unlikely on what may be broadly (if very loosely) described as Hollington v F Hewthorn & Co Ltd [1943] KB 587 grounds. That said:*

*(i) Had the FTT Decision and the CA Minute been available at the time of trial, we regard it as overwhelmingly likely that, in the interests of justice and fairness, the Crown would have been required to make admissions as to their recognition of the applicant as a VOT—so that, in practical terms, any admissibility difficulties at trial would have been resolved.*

*(ii) Whatever the difficulties of admissibility at trial, we would not regard them as outweighing our conclusion, on the basis of all the other relevant factors for the purposes of section 23 , that the materials comprising the First Part should be admissible before us. We proceed accordingly”*



# Crown Court Decision

- ◆ CPS v UM [2020] -HHJ Farrell in the Crown Court of Cambridge
- ◆ 38. It is clearly the case that the legal status of the finding is that of an expression of opinion of the body and therefore not admissible at common law as set out in Hollington. There are no statutory gateways advanced for the admission of this evidence. Indeed none could properly or arguably be advanced. With all due respect to the observations of the Court of Appeal in GS, those observations were obita. I have had the advantage of having heard evidence of the process and hearing full argument at this stage of the proceedings rather than with hindsight. I take the view that the untested and predominantly self-serving nature of the information used to arrive at the NRM decision is therefore one of opinion evidence.





# Verdict on Admissibility

- ◆ Admissibility: “*Yes you are a slave, but shhh you are a secret*”.
- ◆ Consequences: Delays, pleas and credit
- ◆ Sentence mitigation (PWITS)
- ◆ Watch this space – COA pending judgment.



# Bad Character

- ◆ The application of S101 (Important matter in issue)

- ◆ Section 101(3)

*“The court must not admit evidence under subsection (1)(d) or (g) if, on application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it”.*

- ◆ Section 78 PACE 1984





# Psychiatric Report

- ◆ Psychiatrist Evidence
- ◆ Issues of vulnerability / susceptibility - compellability / exploitability and no alternative
  - ◆ Does X have a diagnosed mental health condition? If so, what is it, how does it present?
  - ◆ Does X have any medical issues which would affect his vulnerability to compulsion and or exploitation?
  - ◆ Does X present any PTSD from his past? If so, how would this manifest itself? Would it affect X's vulnerability?
  - ◆ Does X have any medical issues that would affect his reactions to threats of violence?
  - ◆ Does X have any psychological characteristics which may affect how he assesses the level of compulsion from others? I.e. would he perceive the compulsion to be higher / lower than it was in reality?
  - ◆ Does X have any mental characteristics which would make him mistrustful / reluctant to seek out legitimate forms of assistance?



# Duress or Section 45?

- ◊ Was the Defendant impelled to act because, as a result of what he reasonably believed the coercer had said or done, he had a good cause to fear death or serious injury?
- ◊ Have the prosecution proven that a sober person of reasonable firmness, sharing the Defendant's characteristics, would not have responded in the same way?
- ◊ In *R v Quayle* [2005] 1 All ER 988, it was held that "*an imminent danger of physical injury*" was required.





# Route to Verdict

## ◆ Question 1

Has the prosecution made you sure that D was NOT compelled to supply class A drugs.

If you are sure that D was not compelled to do so, return a verdict of '**Guilty**' and disregard the following questions.

If you think that D was or may have been compelled to supply class A drugs, go on to consider the next question.

## ◆ Question 2

Has the prosecution made you sure that the compulsion of D was not attributable to slavery or exploitation?

If you are sure that it was not, you must return a verdict of '**Guilty**'.

If you think that it was or may have been, go on to consider the next question.

## ◆ Question 3

Has the prosecution made you sure that a reasonable person in the same situation as D (eg. lacking family ties) and of D's age and sex, sharing any of D's physical characteristics would have had a realistic alternative to assisting in the supply of class A drugs?

If the prosecution has made you sure that a reasonable person (as I have explained that concept to you) would have had a realistic alternative, return a verdict of '**Guilty**'.

If you are not sure, then your verdict will be 'Not Guilty'.



# Conclusion

- ◇ Frustrating Conclusion
- ◇ Check List:
  - ◇ NRM referral
  - ◇ Bad Character Response
  - ◇ Expert Report
  - ◇ Social worker / probation worker
  - ◇ Duress or Section 45
- ◇ Watch this space





# DO YOU THINK YOU HAVE COME INTO CONTACT WITH A VICTIM OF MODERN SLAVERY?

It is important to notify the Government  
to help build a clearer picture of this  
hidden crime.

Follow the steps below to help tackle modern slavery and  
ensure that victims who want it can get the right support.

## IF YOU THINK THE VICTIM IS UNDER 18

You should complete an  
NRM form



## IF YOU THINK THE VICTIM IS OVER 18

If you want to receive  
government support  
and are happy to be  
identified you should  
complete an NRM  
form

If they would like to  
remain anonymous  
you should complete  
a duty to notify form  
(MS1 form)



Visit [gov.uk](http://gov.uk) and search 'duty to notify' for further details  
and to download NRM and MS1 forms and guidance.

In addition to the above reporting process, if the person you  
have encountered is in danger, you should call the  
police as normal.

**MODERN  
SLAVERY**  
[modernslavery.co.uk](http://modernslavery.co.uk)

# DOMESTIC SLAVERY

IT'S CLOSER THAN YOU THINK

TO REPORT CONCERNS, SEEK ADVICE OR GET  
HELP CALL THE CONFIDENTIAL UK MODERN  
SLAVERY HELPLINE ON 0800 012 1700 OR  
VISIT [MODERNSLAVERYHELPLINE.ORG](http://MODERNSLAVERYHELPLINE.ORG)

## Help for adult victims of Modern Slavery

Your immigration options if  
you've been trafficked into  
exploitation in the UK



# HELP FREE THE UK FROM MODERN SLAVERY

# MODERN SLAVERY IS CLOSER THAN YOU THINK

VICTIMS OF MODERN SLAVERY COULD BE  
LABOURING ON A NEARBY BUILDING SITE  
OR HELPING TO PAVE YOUR DRIVEWAY.

Victims are often trafficked and through fear  
or coercion, forced to work for little or no money.  
Sometimes, victims are sexually exploited or  
forced to commit crime.

Slavery is closer than you think. It happens  
all over the world including the UK.  
If you are a victim or know someone who might  
be visit [modernslavery.co.uk](http://modernslavery.co.uk) or to seek help  
or report concerns call the helpline.

**0800 0121 700**

Costs can be born landlines and most mobile networks.

# MODERN SLAVERY IS CLOSER THAN YOU THINK

VICTIMS ARE EXPLOITED IN LABOUR,  
PROSTITUTION AND DOMESTIC WORK

Victims of Modern Slavery can often be trafficked  
and through fear or coercion, forced to work  
for little or no money. Sometimes, victims are  
sexually exploited or forced to commit crime.  
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## SEND **SLAVERY** PACKING

Most food processing workers are employed legitimately.  
But in 2016, 92 potential victims of slavery were found to  
be working in the food processing and packaging sector,  
though the real number of victims is probably much higher.

Through threats, violence or coercion, victims of modern slavery are  
forced to work for little or no money, live in squalid accommodation  
and have their identity documents taken from them.

If you employ staff in the food processing  
industry, ensure you are not at risk from  
an illegal labour provider:

- ✓ Check if they are licensed with the  
Gangmasters and Labour Abuse  
Authority (GLAA) as a labour provider.  
Find out how at [www.gla.gov.uk](http://www.gla.gov.uk)
- ✓ Can they provide you with a licence  
number?
- ✓ Are they prepared to give you a Service  
Level Agreement to provide you with a  
clear understanding and documentation  
of who is responsible for all elements of  
your workers' welfare?
- ✓ Does it sound like they are over  
promising? Are they offering workers  
at a reduced rate or saying they can  
take more in less time than you would  
reasonably expect?
- ✓ Do they carry their (workers')  
identification?

To find out how to protect your workers visit  
[gov.uk/homeoffice/modern-slavery-information](http://gov.uk/homeoffice/modern-slavery-information)

To report any suspicions of slavery visit  
[modernslavery.co.uk](http://modernslavery.co.uk) or call **0800 0121 700**

THEY PROMISED  
ME A GOOD JOB.  
**THEY LIED.**  
NOW I'M TRAPPED.

## WASH **SLAVERY** OUT OF CATERING

Most hospitality workers are employed legitimately. But in  
2016, instances of modern slavery were reported in the sector.

Through threats, violence or coercion, victims of modern slavery are  
forced to work for little or no money, live in squalid accommodation  
and have their identity documents taken from them.

If you employ hospitality staff, ensure you  
are doing so responsibly:

- ✓ Check all staff have a written employment  
contract and that they have not had to pay  
any direct or indirect fees to obtain work.
- ✓ Make sure staff are legally able to work in  
the UK. Can the recruitment agency prove  
that appropriate checks have been made?
- ✓ Make sure your workers know their  
statutory rights, including sick pay and  
holiday pay.
- ✓ Check the addresses of those working  
for you. A number of people listing the  
same address may indicate high shared  
occupancy, often a factor for those  
being exploited.
- ✓ Assess quotations and fees from agencies  
charging suspiciously low rates against  
standard industry pricing.

To find out how to protect your workers visit

## NO ROOM FOR **SLAVERY**

Most hotel workers are employed legitimately. But in  
2016, instances of modern slavery were reported in the  
hospitality sector.

Through threats, violence or coercion, victims of modern  
slavery are forced to work for little or no money, live in squalid  
accommodation and have their identity documents taken  
from them.

If you employ staff, ensure you are doing  
so responsibly:

- ✓ Check all staff have a written  
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to obtain work.
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RED LION  
CHAMBERS