

# REPRESENTING SURVIVORS OF MODERN SLAVERY

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# WHAT IS MODERN SLAVERY

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- Modern Slavery Act 2015
- s.1 slavery, servitude, or forced or compulsory labour
- s.2 human trafficking
- In *CN v UK* (2013) 56 EHRR 24 the ECtHR declared absence of UK *criminal* legislation covering the conduct to be in breach of the positive framework duty under Article 4 ECHR.
- The 2000 Palermo Protocol and the 2005 Council of Europe Anti Trafficking Convention.
- For historical reasons this conduct has not been regulated by statute.
- The nature of the conduct. It is wide in scope, and depend on subtle forms of coercion.
- SSFLC “*form a hierarchy of denial of personal autonomy*” - *R v K* [2013] QB 82

# THE MSA 2015 AND COMPENSATION

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Government's Modern Slavery Strategy 2014. To: *“support the reintegration of victims into society, both here in the UK and in their countries of origin, safeguard against re-trafficking and ensure that there are avenues for victims to receive reparation and compensation.*

Slavery and Trafficking Reparation Orders, s.8 MSA. “new, bespoke orders?”

- By November 2017, not a single SRO had been made.
- Identical in format to existing compensation orders, where:  
*“the court has no jurisdiction to make an order where there are real issues as to whether those to benefit have suffered any, and if so, what loss: R v Horsham Justices ex p Richards [1985] 1 WLR 986”*

# LEGAL AID FOR CLAIMS - LASPO 2012

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- Schedule 1, paras 32 and 32A LASPO 2012.
- Make civil legal services available for employment law claims and civil claims for damages
- As amended by the MSA 2015, applies both to victims of human trafficking (para.32) and of slavery, servitude, or forced or compulsory labour (para.32A)

# A STATUTORY TORT IN THE MSA 2015?

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The Government's response to a suggested amendment to the MSA Bill to include a statutory tort:

*I assure the Committee that civil remedies in tort already exist for victims of trafficking and slavery to claim damages from perpetrators through ordinary civil law and the Human Rights Act, which was raised by the noble Earl, Lord Sandwich. Damages can, for example, be recovered for loss or damage caused to victims under the torts of intimidation, harassment, assault, unlawful imprisonment, negligence and breach of duty. ... we consider that existing law provides sufficient access to civil remedies for victims of slavery and trafficking.*

Lords Hansard, 3<sup>rd</sup> December 2014, columns 1352-1353.

# Council of Europe Convention Against Trafficking in Human Beings 2005

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## Article 15

*(3) Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.*

*(4) Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.*

In *A&B v CICA* [2018] 1 WLR 5361, the Supreme Court will consider whether Article 15(4) ECAT should be read into the positive obligations under Article 4 ECHR, see also *Chowdury v Greece* 21884/15, 30.03.17.

# CRIMINAL INJURIES COMPENSATION

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- Must meet the definition of a ‘crime of violence’ under the CICA 2012 Scheme:
  - (a) a physical attack;
  - (b) any other act or omission of a violent nature which causes physical injury;
  - (c) a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear;
- Awards less than common law damages
- Is the prohibition on unspent convictions discriminatory under Articles 4 and 14 ECHR? *A & B v CICA* [2018] EWCA Civ 1534, heard by Supreme Court 11.11.20

# EMPLOYMENT AUTHORITIES

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A employment/labour law jurisprudence already exists:

- *Benkharbouche* [2017] UKSC 62
- *Reyes v Al Malki* [2017] UKSC 61
- *Hounga v Allen* [2014] 1 WLR 2653,
- *Chandhok v Tirkey* [2015] ICR 527;
- *Puthenveetil v Alexander & Others* Case No 2361118/2018

But see:

- *Taiwo v Olaigbe* [2016] UKSC 31 - mistreatment on ground of immigration status is not race discrimination. The Supreme Court questioned whether there should be a remedy for victims of modern slavery in the Employment Tribunal.

# PRIVATE LAW CAUSES OF ACTION

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- Contract
- Restitutionary claims/quantum meruit
- Intentional torts
  - Assault and battery
  - False imprisonment
  - Intimidation/deceit
- Negligence: common law duty to provide a safe system of work - non delegable, may include omission to protection from acts of 3rd parties - *Rahman v Arearose* [2001] QB 351
- Protection from Harassment Act 1997
- Unlawful means conspiracy

# EXISTING CIVIL AUTHORITIES

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- *AT v Dulghieru* [2009] EWHC 225 QB - quantum for trespass to the person and conspiracy, including aggravated and exemplary awards.
- *Godwin v Ozoigwe*, CA, 16<sup>th</sup> June 1992 - intimidation as a tort.
- *Galdikas v Houghton and others* [2016] EWHC 1376 QB exploitation of agricultural workers, strike out and summary judgment, breach of Gangmasters Licensing Rules 2009.
- *Anztuzis v DJ Houghton Catching Services Ltd* [2019] EWHC 843 (QB) exploitation of agricultural workers, personal liability of company officers for inducing breach of contract by company.
- *Ajayi v Abu*, [2017] EWHC 1946 (QB) - domestic servitude - contract, NMW exemption, contract limitation, quantum.
- *Ajayi v Abu*, [2017] EWHC 3098 - contract NMW, harassment.

# ISSUES IN MODERN SLAVERY CLAIMS

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- Are the modern slavery offences crimes of violence for the purposes of the 2012 CICA Scheme?
- Vicarious liability/non delegable duties.
- Supply chain cases - who is the claimant's employer?
- False imprisonment in servitude cases? See *Jollah v SSHD* [2020] UKSC 4.
- Illegality/is there a contract?
- Failure to protect/omission cases.
- Limitation and the various causes of action.
- Each case needs to be assessed and pleaded on its own facts.
- The international obligations.

# REPRESENTING SURVIVORS

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- Common issues that arise in representing survivors include:
  - Language barriers
  - Difficulty recognising treatment as exploitation.
  - Mental health problems and conditions
  - Itinerant lives.
  - The insidious nature of the control involved.
  - Funding claims

Questions

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