

Modern Slavery through the Lens of the Criminal Justice System. An Interview with Caroline Haughey OBE KC

Caroline Haughey OBE KC is a criminal barrister in independent practice. She both prosecutes and defends across the entire range of criminal cases but has a specialism in modern slavery cases, specifically in prosecution. She also sits as special adviser to the House of Lords' Modern Slavery Act 2015 Committee and spends a significant part of her practice lecturing and advising jurisdictions on the drafting, implementation, and application of modern slavery legislation. She is interviewed by Dr Alicia Heys, Senior Lecturer in Modern Slavery at the Wilberforce Institute, University of Hull.

The interview took place in May 2024.

You've clearly got a range of expertise across a variety of criminal cases. Please could you tell us a bit about your background and how you came to work on modern slavery cases?

My interest in this area started really at university. I went to Trinity College Dublin and did my final research thesis on the decriminalisation of prostitution in Ireland. I based that on fieldwork of interviewing sex workers in the Dublin area and was subsequently asked to produce a white paper on this topic for the Government, following a series of murders of sex workers in Dublin.

During my early days of practice as a criminal barrister I worked with a whole range of criminal offences, but I particularly enjoyed dealing with vulnerable witnesses, both prosecution and defence, and I was instructed to prosecute the first case of modern slavery called *R. v S.K.* This is currently the leading authority on modern slavery in the UK and since then I have prosecuted an entire range of cases under that label.

I find modern slavery cases particularly fascinating because the offending is not linear. So, in a murder case for example, we look at who died, how they died, and who did it. But modern slavery cases need to be much more holistic — we have to look at the entire range of who's done what and how it happened. So, how did someone become a victim? What other types of criminality have occurred? Who has benefitted? And I really enjoy the mental stimulation of that.

Prosecuting *R. v S.K.* as the first case of modern slavery must have given you a really unique insight into this type of crime. How has your expertise developed in this area?

I was involved in the drafting of the Modern Slavery Act and I've reviewed it once independently for

the Government and a second time as an independent legal adviser. I've given evidence in front of the Home Affairs Select Committee on Modern Slavery, I've sat on the Modern Slavery Taskforce with the Prime Minister, and I'm currently sitting as the specialist advisor to the House of Lords' Modern Slavery Act 2015 Committee.

I think I've ended up specialising in this work really because I'm passionate about our criminal justice system. This was a very nascent area of law when I first got involved, and though the Modern Slavery Act is now nine years old, I think we've still got a long way to go.

Do you find that modern slavery cases differ significantly from other cases that you work on?

It goes back to my earlier point that most offences are linear and look at who has done what and how. In those cases, it's really easy to identify the victim — either they are dead or they are making the complaint. It's different in modern slavery and human trafficking offences, where victims often don't identify as being victims. They may be ashamed about what's happened to them, they may be in denial, or they may believe simply that their exploitation was the 'least worst' option compared to the alternatives that they perceived they had. Gathering the evidence from them is very difficult and will often be challenged. This then requires us to look for other corroborative evidence which cannot be challenged, such as materials from banks, phones, and local authorities.

You've mentioned that gathering evidence from victims in modern slavery cases can be difficult. What are some of the other most challenging aspects of working on these cases?

A main challenge is funding. When the police get a case in front of the Crown Prosecution Service, we often don't have sufficient officers or resources to

ensure that we can look at all reasonable lines of enquiry. There is also a problem with the conflation of language around immigration offending with trafficking offending. Politicians, media, and indeed the public often conflate those terms, rather than identifying that modern slavery and trafficking for exploitation are separate to immigration offences.

I think the other significant challenge is that there is a lack of understanding and awareness from investigators and other participants in the criminal justice system about the law, how it applies, and how it can be investigated. However, there are very proactive participants and stakeholders in this sphere, and things — I hope — can only get better.

The Modern Slavery Act was introduced in 2015 with the broad purpose of consolidating existing offences, improving support for victims, and ensuring that perpetrators receive suitable punishment. How far do you think it is meeting these intentions?

I think that the Modern Slavery Act is, in a broad sense, fit for purpose. Consolidating the existing offences has clearly occurred. What has also happened is the evolution and application of the Act to things like county lines, which when we were drafting the Act, simply wasn't a phenomenon we were aware of.

The Act did improve support for victims, and the provision of victim navigators I think has been the single biggest improvement. However, where support has failed is in the application of the NRM [National Referral Mechanism] principles. The introduction of the Illegal Migration Act and the Nationality and Borders Act have diminished the rights that we have provided for victims.

I am seeing perpetrators receive mainly suitable punishments. We have got the Sentencing Council's Guidelines that were brought in a couple of years ago and there is the deployment of slavery and trafficking prevention orders, though I'd like longer sentences and to see these orders being used more. The failure is not in the purpose or intention of the Act but in its application, because everything is there to use, but people are fearful because of the size of these cases, because of the lack of funding and resources, and because of a lack of knowledge.

What do you feel are the biggest challenges to securing prosecutions and convictions for perpetrators of modern slavery offences?

The biggest challenges facing these prosecutions are 1) funding and resource, 2) understanding and application, and 3) generating accounts from victims. Most cases are big because trafficking is usually an organised crime group activity. They are complex because you are dealing with vulnerable witnesses. And in my experience the strongest cases are those when you have corroborative independent evidence, and securing and obtaining that information is both time-consuming and expensive. The difficulty arises when you don't have a financial investigating officer, because that means you don't have someone who can do the critical analysis of the financial material that is the foundation on which most of these cases are built.

The other biggest single area that I feel we're at risk of is that people don't understand how to prosecute these cases. People take the easy option out, take the low-hanging fruit instead of gouging out the beating heart of these organised crime groups. Another challenge we have is obtaining and understanding the accounts from these victims. Even if we're not going to rely on those victims' testimony, obtaining a reliable account that triggers lines of enquiry that enables you to build a case without a victim has got to be the way forward. And without applying those three principles, I think we are failing.

How much do we know about rates of prosecutions and convictions, and what can we do to increase those rates?

The rates of prosecution and conviction are extremely hard to gauge because the data gathering in this area is complex. Often, pleas are accepted to lesser offences which is particularly evident in sexual offending. For example, someone who has committed a sex trafficking offence may plead out simply to controlling for the purposes of prostitution which wouldn't trigger a record under the Modern Slavery Act. Often the appropriate offence isn't prosecuted, but if it is, pleas are accepted to lower offences that don't capture the same data. Increasing these rates of investigation, prosecution, and conviction can be done

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simply by giving it more resources, educating and informing more people, and having a consistent approach on how to look at these cases.

Do you think that there are other ways to deter people from committing modern slavery offences than prosecutions and convictions?

Slavery and Trafficking Risk Orders can be incredibly effective in disrupting organised crime groups and they send out a message out that this behaviour is not tolerated. I do think disruption will always be a priority together with safeguarding, but if we don't choose to prosecute and demonstrate the power of our legislation and send people to prison, then we will continue to be seen as a wide-open marketplace for this kind of offending.

Is it possible to secure convictions for perpetrators of modern slavery offences without having to rely on a victim's testimony? What evidence would be needed to do this?

I have to acknowledge that that is hard, however, it is not impossible. The approach that I always encourage in every modern slavery case is to start from the assumption that you can't rely on your victim's testimony, but you can use them to understand where you should be looking at lines of enquiry. I think looking at incontestable, documentary evidence that no one can challenge is vitally important. Things like bank statements, bank account opening documents, CCTV footage, national insurance material, Facebook documents, contemporaneous messaging, telephone records, and contents of phones. There has to be an awareness of the need to gather as much corroborative evidence as possible — evidence that is subject to as little challenge as possible. That material is very easily used to present a case and make it so that the defendant is the one that has to provide an account. Another option is to use a compare and contrast approach which considers what the victim has (or does not have) and compares and contrasts that with what the defendant has. More often than not there is a very clear picture of a luxury life comparative to that of the victim. With this information, you don't need to call the victim as long as you can show the connection with the perpetrator and the movement of the money.

How would you describe collaboration amongst modern slavery stakeholders working across the criminal justice system?

I think collaboration across the modern slavery system is challenging. We are hindered by the Data Protection Act, which people use in an uninformed way to prevent access to material without realising the overriding duty of the risk to life and the need to safeguard, and I think there is a disproportionate reliance on the threat of the Data Protection Act as a means of preventing the necessary exchange and sharing of material. I think we've become so information-sharing averse that we are doing way more harm than good.

I don't see education authorities or hospitals informed or educated enough to tell the police when they have concerns about an individual because they don't know what signs to look at and that gives me cause for concern. Also, from a criminal prosecution perspective, I struggle with the material gathering process. I have a case at the moment with a victim who has given nine different accounts to nine different people, all with nine different intentions. They're all trying to help, but because different questions are being asked for different purposes to a woman who doesn't speak English, we're getting variations in the answers. This means she is being considered as inconsistent without taking into account what she's been asked, for what purpose, by whom, and in what language.

How aware do you think the judiciary are of Slavery and Trafficking Prevention Orders (STPOs), Slavery and Trafficking Risk Orders (STROs), and Slavery and Trafficking Reparation Orders, and do you think they are used effectively?

I don't think we're using STROs and STPOs enough and they can be extremely effective. I don't think there is enough knowledge about how to use them and the government guidance only came out recently which speaks volumes. STROs are good at immediate disruption and they send out a strong message. If someone breaches them, it's a fairly binary breach and very easy to prosecute and get custodial sentences for. With STPOs, if you have engagement from the jurisdiction where the defendants have come from,

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then you can achieve a great deal, but it's really important to ensure that there is oversight and monitoring. I think people forget that they are prevention orders rather than prohibitive orders. They don't require any permanent stoppage of behaviours, they simply put the person on notice that they must notify the police before they do anything.

When it comes to compensation, in cases of multiple defendants, it is nigh on impossible to assess who should get what compensation. How do you assess the different experiences that 100 people had and when there may be more victims that you don't know about yet? One of our victims came forward seven years after the offending and five years after we'd completed the first trial. However, if compensation and reparation can be used effectively then I'm absolutely for that. Anything that provides some support to the victims has to be a good thing.

Some victims of modern slavery are coerced into committing crimes. How does this play out in a court of law when such an individual is simultaneously a victim of modern slavery and a perpetrator of the crime they were coerced to commit?

This is a tough area. I do think the section 45 defence is correct: I think it's right that if you have been compelled to commit an act as a result of being trafficked and you had no alternative but to do that act, then that should be an absolute defence.¹ There are conversations being had about changing the remit of schedule 4, but I do think that by and large, those offences on schedule 4 are correct.² I would be concerned about how far we allow it to be altered, but I do think there needs to be greater consistency in applying the public interest test.

Do you think enough is being done to prevent victims of modern slavery serving prison sentences for crimes that they had no choice but to commit?

I'm not sure we're very good at looking after victims of modern slavery who have committed criminal offences that are connected with their exploitation. I can only speak from my own anecdotal evidence, but I defended a 14-year-old at a murder trial. He was a victim of sex trafficking and exploitation and drugs, but

while this was connected to his ultimate involvement in the murder, it was not the sole cause for the murder. Should he have been convicted of manslaughter? Yes, of course he should have and he pleaded guilty in the right circumstances. I'm not sure I'm comfortable in saying that those who commit crimes as a result of modern slavery should automatically not go to prison. I think there has to be a degree of consideration. I certainly think for shoplifting and similar types of offending such as cannabis growing, if someone feels that they have no alternative but to commit the criminal act as a result of being compelled in forced and compulsory labour, then they should of course not have to go to prison because section 45 is an absolute defence. But it's less clear cut when it comes to other types of offending.

How can prisons best support victims of modern slavery who have received prison sentences?

Sometimes victims only come forward once they have gone to prison because, ironically, it is a safe space away from the perpetrators. I think opening those conversations and generating a single point of contact in prisons would be really useful. Prisons need to be intervening and assisting in these cases, because the reality is that people who are trafficked once are at a significantly increased risk of being trafficked again. The vast majority of victims are education- and opportunity-deprived. And if we altered those circumstances, then we are absolutely alleviating the risk of re-trafficking and exploitation. I think placing them in the penal system is catastrophic, it's re-exploiting them. They shouldn't be there in the first place and the court of appeal have handed down a number of judgements on that point.

What is one thing you would change about the criminal justice system in relation to modern slavery cases?

I would make it an obligation that every single individual involved in asking questions of vulnerable witnesses who make an allegation of modern slavery or trafficking has been properly trained to ask those questions, so that we get better at identifying those who need our help most.

1. Section 45 of the Modern Slavery Act provides a statutory defence for individuals who committed a crime as a direct result of their modern slavery experience
2. Schedule 4 lists all the offences for which a section 45 defence may not be used