

GENERAL CRIME CASE COMMENT

DPP v M [2020] EWHC 3422 (Admin)

The admissibility of the Single Competent Authority's decision at trial

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Contact at QEB: [Nadesh Karu](#)

Where a Defendant is relying on the modern slavery defence under s.45 Modern Slavery Act 2015 (“MSA”) one frequent issue between Prosecution and Defence is whether a decision by the Single Competent Authority (“SCA”) that a Defendant is a victim of modern slavery on the balance of probabilities is admissible at trial. This is so particularly following **R v DS [2020] EWCA Crim 285**, which ruled that a decision to prosecute an individual despite a positive finding by the SCA is not an abuse of process due to the availability of s.45 MSA. The case of **DPP v M [2020] EWHC 3422 (Admin)** provides much needed clarification, although leaves some questions unanswered.

The case was an appeal by way of case stated from the Youth Court. At first instance, the District Judge admitted both the decision of the Single Competent Authority that the Defendant had, on the balance of probabilities, been recruited, harboured and transported for the purposes of criminal exploitation and the full minute underlying that decision. This was done by agreed fact and exhibiting the full minute. The Divisional Court upheld the District Judge’s decision.

The case, and the fact that the SCA’s conclusive grounds decision is admissible in a criminal trial is now noted in the Crown Court Compendium, as updated on 17 December 2020.

Nevertheless, the status of the SCA decision and minute once admitted is unclear. Whilst the Divisional Court noted that the SCA decision maker had expertise to come to a decision (para 54) it was also said that *“the SCA decision maker will not have prepared their minute of decision with a view to its being used as expert evidence”*. Further, *“the SCA decision maker will not have anticipated giving evidence in relation to their conclusive grounds decision”* (para 53). Accordingly, it seems that the SCA decision cannot be treated as expert evidence. However, as the decision is only likely to be relied upon where the Defendant’s victimhood is central to the case (e.g. where s.45 MSA is raised), it is hard to see how a jury would not give greater weight to a decision by the SCA, a branch of the Home Office, and therefore a part of the State, than other non-expert evidence. Thus, in jury cases carefully crafted directions will be needed, an aspect which **M** did not have to consider.

Although the Divisional Court stated that the fact that the decision and minute would not have been prepared as expert evidence did not prevent them from being admissible, the Court did not explain the basis for admissibility beyond endorsing the obiter remarks of Gross LJ in **R v GS [2018] EWCA Crim 1824** that the SCA minute be adduced by agreed fact. Interestingly, in **GS**,

Gross LJ noted (at para 69) that the admissibility of the decision and the underlying reasons at trial were “*unlikely*”; nevertheless, the Court of Appeal regarded it “*as overwhelmingly likely that, in the interests of justice and fairness, the Crown would have been required to make admissions*”, thereby highlighting the underlying difficulty. **M** determined the issue of admissibility but has not resolved the difficulty noted by Gross LJ.

Moreover, the Divisional Court’s decision to deem the full minute admissible is interesting, as to the extent the minute is comparable to an expert report, an expert report would not be exhibited. There is no analogous kind of routinely exhibited evidence: interviews do not contain the analysis of an SCA minute and at the other end of the scale, medical records are more empirical in nature, perhaps more readily justifying their admission.

That said, it is understood that the Crown intends to seek leave to appeal to the Supreme Court, meaning we may yet have further, definitive clarification on the above. Meanwhile advocates and Judges will still have to grapple with how to explain the significance of SCA decisions and minutes to juries, but at least for the time being their admissibility is no longer in doubt.

This case comment was produced by [Nadesh Karu](#). This article should not be taken as constituting formal legal advice. To obtain expert legal advice on any particular situation arising from the issues discussed in this note, please contact our clerking team at barristers@qebhw.co.uk. For more information on the expertise of our specialist barristers in criminal and regulatory law please see our website at www.qebholliswhiteman.co.uk.