



The Inns of
Court College
of Advocacy

The Council of the Inns of Court

YOUTH JUSTICE

An Insight Into Child Trafficking

**An interview about Child Trafficking with Laura Duran –
Head of Training, ECPAT**

Chapter Four - The Modern Slavery Act 2015

(transcript of [video](#))

A **Lynda Gibbs:** Laura you and I have spoken before about the non-prosecution principal, and also about the section 45 defence under The Modern Slavery Act which is something that has to be actively pleaded. Is that a problem in your
B view?

C **Laura Duran:** We believe that that is a problem, because that means that victims of trafficking who are already very vulnerable will have to actively seek a defence and go through a criminal trial.

D There is Crown prosecution guidance in relationship to whether it is in the public interest and how prosecutors should determine to actually charge and continue with procedures against a person, even when they are indeed a victim of trafficking. But often that is not enough of a safeguard against prosecution for very vulnerable victims, particularly when it's deemed that the criminality is so
E severe, such as in cases of for example cannabis cultivation.

F Another issue with section 45 defence is that for both children and adults there is a limb that must be fulfilled which we refer to as the reasonable persons test. So this is section 4c of section 45, and what this is saying is that a reasonable person in the same situation, and having the person's relevant characteristics, would commit that act.

G But for victims of trafficking - particularly those who are foreign national children - that might be very difficult to be able to get for example a jury to understand very complex means of control, such as spiritual abuse, or debt bondage, as they
H can't really put themselves in the shoes of reasonably what that person has been through, because their experiences are so distinct.

Lynda Gibbs: Do you have any particular concerns about children involved in this area who also have precarious immigration status?

A **Laura Duran:** Absolutely, any child who has a precarious immigration status and faces severe criminal charges will find it impossible or very very very difficult to ever regularise their immigration status. So it's a bit of a domino effect for children in which one issue in one legal arena has a high impact on the other issues they will have in other legal arenas.

B

C **Lynda Gibbs:** There's an area of potential real difficulty for barristers and their duty of confidentiality to their client, when they're representing a child who doesn't want to disclose the fact that they're a victim of trafficking.

D When you undertake your training with advocates what advice do you give legal practitioners on that really difficult issue?

E **Laura Duran:** Well if a child reveals information to their barrister about continuing sexual or physical abuse - and obviously child trafficking is child abuse - it's important to understand that yes there might be a conflict between your duty of confidentiality and your ability to act with integrity.

F We really ask barristers to reflect whether the materiality of the information in question is important enough that the child's life, or their health - both mental and physical - is at risk. Then if so, they really need to consider breaching their duty of confidentiality, if there is such a serious risk of harm to the child.

G **Lynda Gibbs:** So in essence what you're saying is it's very case-specific?

H **Laura Duran:** It's absolutely case-specifics; so there is not a hard and fast rule that we can apply to all cases. The advocate really needs to consider whether that child is presenting at risk of harm.

Lynda Gibbs: Laura Duran thank you very much indeed.

Laura Duran: Thank you Lynda.

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