Neutral Citation Number: **[2026] EWHC 3055 (Admin)**

Case No: AC-2025-LON-002308

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/11/2026

Before :

MRS JUSTICE O'FARRELL DBE

- -

Between :

THE KING on the application of CBK — **Claimant**

- and -

(1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(2) COMMISSIONER OF POLICE FOR THE METROPOLIS — **Defendants**

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- -

James Robottom and **Jack Boswell** (instructed by **Leigh Day**) for the **Claimant**
Sian Reeves (instructed by **Government Legal Department**) for the **First Defendant**
Hugh Davies KC and **Ryan Dowding** (instructed by **Directorate of Legal Services**) for the **Second Defendant**

Hearing dates: 14th, 15th and 16th July 2026

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Approved Judgment

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Mrs Justice O'Farrell:

1. The principal issue in this case is whether sections 2 and 3 of the Modern Slavery Act 2015 ("the MSA") provide an effective and practical framework, in compliance with Article 4 of the European Convention on Human Rights ("the ECHR"), for the penalisation of human trafficking for the purpose of organ removal where (i) no reward is given or offered and/or (ii) the means of trafficking are abuse of power and/or abuse of a position of vulnerability.

2. In February 2021 the claimant ("CBK") travelled from Nigeria to the United Kingdom in order to donate one of his kidneys to Dr Obinna Obeta. On 17 July 2021 the transplant took place at the Royal Free Hospital in London. CBK did not receive any payment or other reward for his kidney.

3. On 23 March 2023, following a trial before Johnson J at the Central Criminal Court, Dr Obeta, Ike Ekweremadu and Beatrice Ekweremadu were convicted on counts of conspiracy to traffic another victim for organ removal ("the Related Conspiracy"). On 5 May 2023 they were sentenced for that offending: Dr Obeta to 10 years' imprisonment; Ike Ekweremadu to 9 years, 8 months' imprisonment; and Beatrice Ekweremadu to 4 years, 6 months' imprisonment.

4. On 7 February 2025 CBK was found by the first defendant ("SSHD") to be a victim of human trafficking for organ harvesting.

5. On 17 April 2025 the second defendant ("the MPS") confirmed its decision not to prosecute Dr Obeta in respect of the trafficking of CBK on the ground that there was insufficient evidence to support a charge ("the Decision").

6. CBK brings this claim for Judicial Review on the grounds that:

    i) the first defendant ("SSHD") is in breach of the systems duty arising under Article 4 of the ECHR because the MSA does not provide a practical and effective means of prosecuting cases of trafficking with a view to organ harvesting where there is no evidence of a reward; and

    ii) the MPS is in breach of the investigation duty under Article 4, on the basis that: (a) the legislative framework is inadequate and restricted the ability of the MPS to properly investigate CBK's allegations; or (b) the MPS misdirected itself as to the law, failed to pursue reasonable lines of enquiry and failed to initiate the search for CBK with sufficient speed.

7. The position of SSHD is that there is no systems breach of Article 4 of the ECHR. The definition of exploitation in section 3 of the MSA is sufficiently broad and flexible to capture all types of human trafficking for organ removal, including where there is no reward, in addition to new and emerging forms of modern slavery. There is no lacuna in the domestic criminal law framework that would have precluded an effective investigation in respect of CBK.

8. The position of MPS is that, on a purposive interpretation of the MSA, there is no systems breach of Article 4 of the ECHR. Further, there is no breach of its investigation duty under Article 4. Any initial misunderstanding by the MPS as to the scope of the legislation was transient; the Decision reflected the proper approach in law and as to the evidence. The investigating officers properly applied the statutory criteria and were entitled to conclude that there was, and remains, insufficient evidence to prosecute Dr Obeta under sections 2 and 3 of the MSA.

Background facts

9. CBK was born in Ebonyi State, Nigeria on 1 August 1993. He was from a poor family and worked selling clothes on a market stall in Benin City.

10. Dr Obeta became a regular customer at CBK's market stall. He told CBK that he was very ill and needed a kidney transplant. CBK agreed to act as a donor.

11. On 20 December 2020 Dr Obeta made a UK visitor visa application in CBK's name and made travel arrangements for him. On 21 February 2021 CBK travelled by plane to London with Dr Obeta and his wife. They stayed at a one-bedroom flat in East London, which was owned by an elderly Nigerian landlady. The landlady slept in the bedroom, Dr Obeta and his wife slept on the sofa, and CBK slept on the hallway floor.

12. On 18 June 2021 CBK and Dr Obeta were assessed by an independent assessor from the Human Tissue Authority. On 25 June 2021 the assessor issued a report, confirming that the transplant could go ahead.

13. On 17 July 2021 CBK underwent laparoscopic left donor nephrectomy under general anaesthesia and his left kidney was transplanted into Dr Obeta. Following the operation, CBK returned to the flat in East London.

14. On 5 May 2022 an investigation began into Dr Obeta regarding the Related Conspiracy and on 12 July 2022 Dr Obeta was arrested.

15. As part of that investigation, Detective Inspector Esther Richardson, attached to the Modern Slavery and Child Exploitation ("MSCE") team within Central Specialist Crime at the MPS, requested the Human Tissue Authority to carry out a search of its records, which revealed that Dr Obeta had received a kidney donated by CBK in 2021.

16. The Human Tissue Authority records included the address in East London given by CBK in 2021. Initial enquiries made by the MSCE to British Airways led police to believe that CBK had returned to Nigeria on 13 February 2022 but further enquiries made in January 2023 indicated that CBK did not board the flight on which he was booked.

17. During the Related Conspiracy trial in January to March 2023, Dr Obeta provided details of the circumstances in which CBK came to donate a kidney to him. He explained the use of 'Go Fund Me' to fund the transplant operations and confirmed that no payment or other reward was offered or made to CBK for

his kidney. Dr Obeta disclosed in cross-examination that CBK had remained in the UK.

18. In September 2023, the MSCE commenced a search for CBK, as a potential victim of human trafficking for the purpose of organ harvesting. On 11 October 2023 Detective Sergeant Owen found him at the property in East London recorded as his address by the HTA.

19. When CBK was interviewed by officers in the MSCE, he stated that he was not forced to donate his kidney to Dr Obeta, nor was he paid for doing so. He wanted to help because Dr Obeta was very sick.

20. On 31 October 2023 the MSCE referred CBK to the National Referral Mechanism ("the NRM"), on the basis that he was vulnerable and potentially exploited by Dr Obeta, having been transported from Nigeria to the UK for the purposes of donating his kidney. CBK was moved to a safe house.

21. On 13 December 2023 a positive reasonable grounds decision was made by SSHD, whereby it was accepted that there were reasonable grounds for believing CBK might be a victim of modern slavery.

22. On 1 October 2024, DS Andy Owen and Detective Constable Richard Newman of the MSCE, Central Specialist Crime Unit, informed CBK that no further action ("NFA") would be taken in respect of any criminal proceedings arising out of his kidney donation to Dr Obeta:

> "Unfortunately, we have reviewed the case involving CBK and it does not meet the evidential threshold, to pass this to the Crown Prosecution Service for charging advice. Therefore No Further Action will be taken. Please note that we have engaged with the same CPS team from the original trial throughout and whilst this is a police decision they are of the same opinion.
>
> The evidential difficulty comes down to the reward aspect. At no stage has CBK suggested a reward, or any material advantage was offered/received in return for his kidney. There is also no independent evidence to further this position."

23. On 14 October 2024 CBK requested a review of the MPS decision, not to refer to the CPS or charge Dr Obeta in respect of crimes committed against CBK, under the Victims' Right to Review ("VRR") Scheme.

24. On 19 November 2024 the MSCE decided to submit the case to the CPS for advice and to consider potential charges against Dr Obeta. This was followed by the submission of a case file, together with an evidential case review, to the CPS by DS Owen on 21 January 2025.

25. On 7 February 2025 a positive conclusive grounds decision was made, whereby SSHD accepted on the balance of probabilities that CBK was a victim of modern slavery for the purpose of organ harvesting:

> "Overall, it is accepted that you were recruited in Nigeria by Dr Obeta and transported from Nigeria to the United Kingdom therefore you meet part 'a'. Furthermore, it is considered you were deceived into believing you would be donating your kidney to Dr Obeta in the United Kingdom with the promise of aftercare in return for donating your kidney to him, however this was not the case, thus meeting part 'b'. Lastly, it is considered that you were a victim of Organ Harvesting therefore you also meet part 'c'."

26. On about 13 March 2025 the CPS rejected the case referral on the basis that it did not meet the requirements for a CPS charging decision and/or did not pass the evidential stage of the Code for Crown Prosecutors.

27. On 17 April 2025 DS Owen confirmed the MPS decision to take no further action in response to a challenge (the Decision).

Proceedings

28. On 15 July 2025 CBK issued the claim form for judicial review. The grounds relied on are:

    i) SSHD breached her duty under Article 4 ECHR to enact criminal law provisions effectively penalising and allowing for the effective prosecution and investigation of human trafficking for organ removal.

    ii) The lack of specific legislation prevented SSHD and/or MPS from properly investigating CBK's complaints; alternatively, MPS' misdirection as to the meaning of the relevant provisions caused him not to pursue reasonable lines of enquiry in breach of his investigative duty under Article 4 ECHR;

    iii) Further or alternatively, the failure by MPS to commence the search for CBK until approximately 16 months after he was identified as a potential victim of organ harvesting constituted a breach of the investigative duty.

Evidence

29. The court has the benefit of the following witness statements:

    i) CBK's witness statement dated 31 July 2025;

    ii) witness statement of Suzelle Dickson, Enforcement Policy Lead in the Modern Slavery Unit at the Home Office, dated 7 May 2026;

    iii) first witness statement of Detective Inspector Esther Richardson, attached to the MSCE team within Central Specialist Crime, dated 11 February 2026;

    iv) DI Richardson's second witness statement dated 30 March 2026.

30. On 6 July 2026 the court made an order, dealing with a number of applications made by the parties regarding the witness and documentary evidence to be adduced at the hearing.

31. On 9 July 2026 CBK made an application for permission to adduce and rely on the witness statement of Richard Beete dated 8 July 2026, in support of his pleaded case that CBK was trafficked by Dr Obeta for the purpose of organ removal as a result of Dr Obeta's abuse of power and abuse of CBK's position of vulnerability. The application was opposed by SSHD. The court indicated that it would receive the evidence on a *de bene esse* basis and determine the application as part of this Judgment.

32. Mr Beete is a Victim Navigator at the charity, Justice and Care, providing support services for victims of modern slavery. In October 2023 he was approached by the MSCE team, who wanted to investigate a potential offence of trafficking for organ harvesting against Dr Obeta in respect of CBK and requested support for CBK in that process. Mr Beete met with CBK to explain the support that Justice and Care could provide through the criminal justice process and through the NRM. This support enabled CBK to undertake a video recorded interview with the police and to enter the NRM. On 3 November 2023 he was taken to a safe location in the north of England where he was able to access the support that the NRM provides, including safehouse accommodation, financial support and access to medical services. Following receipt of the initial NFA in October 2024, Mr Beete discussed the police decision with CBK, whom he described as disappointed but understanding.

33. It is clear from Mr Beete's statement that the support provided by Justice and Care has been a valuable life-line for CBK and enabled him to enter the NRM to access appropriate services. The statement refers to ongoing trauma suffered by CBK and his gradual realisation that Dr Obeta might have taken advantage of his good nature. Notwithstanding this additional insight, it is not material evidence that will assist the court to determine the issues in this claim. The issue for the court is not to determine whether CBK was a victim of modern slavery or whether any prosecution of Dr Obeta would have succeeded. The court's task is to determine whether the MSA provides effective legislation for the penalisation of human trafficking , where the means of trafficking is said to be abuse of power and abuse of vulnerability in the absence of reward; further, whether MPS discharged its Article 4 investigation duty on the facts of this case.

34. For those reasons, permission is refused for the introduction of Mr Beete's witness statement.

The issues

35. A list of issues has been agreed by the parties as follows:

    i) Ground 1: Do sections 2 and 3 of the Modern Slavery Act 2015 provide an effective and practical framework (in compliance with the high-level systems duty under Article 4 ECHR) for the penalisation of human trafficking for the purpose of organ removal where (i) no reward is given

or offered and (ii) the means of trafficking are abuse of power and/or abuse of a position of vulnerability? In particular:

a) Properly construed, do sections 3(5) and/or (6) apply to human trafficking for the purpose of organ removal where no reward is given or offered?

b) Properly construed, do sections 3(5) and/or (6) apply to human trafficking for the purpose of organ removal where the means of trafficking are abuse of power and/or abuse of a position of vulnerability?

c) If the answers to paragraphs 1.a and 1.b above are both "yes", do sections 3(5) and (6) provide an effective and practical framework for penalising such conduct?

ii) Ground 2: Was there an effective investigation into the Claimant's case (in compliance with the investigative duty under Article 4)? In particular:

a) If the answer to 1 above is "no", did that render the investigation into the Claimant's case ineffective?

b) Did the Second Defendant misconstrue sections 3(5) and (6), and did any such error render the investigation into the Claimant's case ineffective?

c) Did the Second Defendant fail promptly to locate the Claimant and investigate his case, in breach of Article 4?

iii) Relief: If the answer to 1 and/or 2 above is "no", what relief should the Court grant? In particular:

a) Can and should sections 3(4), (5) and/or (6) be read down under section 3 of the Human Rights Act 1998 (the "1998 Act"); and, if so, how?

b) What declarations should the Court make in recognition of the breach of the Claimant's rights under Article 4?

c) Should the Court assess and award damages for the breach of the Claimant's rights under Article 4 and, if so, how?

d) Should the Court withhold relief pursuant to section 31(2A) of the Senior Courts Act 1981?

The parties invite the court not to determine relief at this stage, apart from an indication regarding the nature of any declaration or other remedy. The parties will seek to make further submissions on relief, if appropriate, once the embargoed judgment is available.

Legislative framework

36. Article 1 of the Council of Europe Convention on Action against Trafficking in Human Beings ("ECAT"), in force in the United Kingdom since 1 April 2009, provides that the purposes of ECAT are:

> "a. to prevent and combat trafficking in human beings, while guaranteeing gender equality;
>
> b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
>
> c. to promote international cooperation on action against trafficking in human beings."

37. The international definition of human trafficking is set out in Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 ("the Palermo Protocol"). That definition has been adopted in Article 4 of ECAT which provides:

> "a. "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
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> b. The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.
>
> c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article.
>
> d. "Child" shall mean any person under eighteen years of age.
>
> e. "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article."

38. The above definition comprises three distinctive elements, as explained in *SM v Croatia* (2021) 72 EHRR 1 at [114]:

i) the *action* of recruitment, transportation (national and international), transfer, harbouring or receipt of persons;

ii) the *means* by which such action is achieved, by threat or use of force or other forms of coercion, fraud, deception, abuse of power or position of vulnerability, payments or benefits;

iii) the *purpose* of exploitation, which includes (at a minimum) sexual exploitation, forced labour or services, slavery, servitude or the removal of organs.

39. Article 18 of ECAT obliges each state party to adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in Article 4 of ECAT, when committed intentionally.

40. Insight into the intended scope of ECAT can be found in the ECAT Explanatory Report, which states at paragraph 4 that to be effective, a strategy for combating trafficking in human beings must adopt a multidisciplinary approach incorporating prevention, protection of human rights of victims and prosecution of traffickers, while at the same time seeking to harmonise relevant national laws and ensure that these laws are applied uniformly and effectively.

41. It is recognised at paragraph 70 of the ECAT Explanatory Report that parties are not obliged to copy verbatim into their domestic law the concepts in Article 4 of the ECAT, provided that domestic law covers the concepts in a manner consistent with the principles of the Convention and offers an equivalent framework for implementing it.

42. Paragraph 223 notes that parties are required to criminalise trafficking in human beings, by means of a single criminal offence or by combining several offences, covering as a minimum, all conduct capable of falling within the definition. Thus, it is necessary to consider the substance of the relevant legislation, rather than its form, when determining whether it satisfies the obligations imposed.

43. Article 4 of the European Convention on Human Rights ("the ECHR") prohibits slavery or forced labour:

> "1. No one shall be held in slavery or servitude.
>
> 2. No one shall be required to perform forced or compulsory labour."

44. Human trafficking, within the meaning of Article 3 of the Palermo Protocol and Article 4 of ECAT, falls within the scope of Article 4 of the ECHR, as explained in *Rantsev v Cyprus and Russia* [2010] 51 EHRR 1 at [282]:

> "There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention in light of present-day conditions, the

> Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes "slavery", "servitude" or "forced and compulsory labour". Instead, the Court concludes that trafficking itself, within the meaning of art.3(a) of the Palermo Protocol and art.4(a) of the Anti-Trafficking Convention, falls within the scope of art.4 of the Convention."

45. Section 2(1)(a) of the Human Rights Act 1998 ("the HRA") provides that a court or tribunal determining a question which has arisen in connection with a Convention right must take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights.

46. Section 3 of the HRA provides that so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

47. Any obligations in relation to trafficking falling within Article 4 of the ECHR are binding on public authorities as a matter of domestic law by reason of section 6 of the HRA, subject to any provisions of domestic primary legislation.

48. As explained by Underhill LJ in *R(TDT (Vietnam)) v SSHD* [2018] 1 WLR 4922 at [15]-[17], Article 4 of the ECHR imposes three positive duties on state authorities, namely:

    i) an obligation to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour, by putting in place an appropriate legislative and administrative framework to prohibit and punish trafficking ("the systems duty");

    ii) an obligation, that may arise where the state becomes (or should be) aware of circumstances giving rise to a credible suspicion that an identified person has been, or is, at real and immediate risk of trafficking or exploitation, to take operational measures to protect victims, or potential victims of trafficking ("the operational duty"); and

    iii) an obligation to investigate potential trafficking, once the matter has come to the attention of the authorities, regardless of whether any complaint has been made by the victim, by an investigation that is independent, prompt and carried out with reasonable expedition ("the investigative duty").

49. In this case, the court is concerned with alleged breaches of the systems duty and the investigative duty. These concepts have been considered in a number of ECHR and domestic court cases.

The systems duty

50. *X and Y v Netherlands* (1985) 8 EHRR 235 concerned the sexual assault of a mentally disabled 16-year-old girl, which was reported to police by her father

but not prosecuted on the basis that the complainant did not make any formal complaint. The court held that Article 8 of the Convention was not limited to a negative obligation to refrain from arbitrary interference in private life; it could give rise to a positive obligation inherent in an effective respect for private and family life. The court noted that it was a matter for each state to determine the appropriate means of compliance with Article 8, falling within the margin of appreciation. However, the court held that the Dutch criminal code violated the Article 8 systems duty because a procedural gap in the offence required the incapacitated victim to make a formal complaint herself before criminal proceedings could be instigated; her father was not entitled to make a complaint on her behalf.

51. *MC v Bulgaria* (2005) 40 E.H.R.R. 20 concerned a decision not to prosecute the alleged rape of a 14-year old girl because there was no evidence that threats or violence were used. Although the criminal offence was defined as including lack of consent, in practice cases were only pursued where there was evidence that the victim had actively resisted. The court held that such practice constituted a breach of the duty to enact criminal law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution, stating:

> "[150] While the choice of the means to secure compliance with Art.8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection.
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> [153] … the Court considers that states have a positive obligation inherent in Arts 3 and 8 of the Convention to enact criminal law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.
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> [167] … the Court's task is to examine whether or not the impugned legislation and practice and its application in the case at hand, combined with the alleged shortcomings in the investigation, had such significant flaws as to amount to a breach of the respondent State's positive obligations under Arts 3 and 8 of the Convention."

52. In *Siliadin v France* (2006) 43 E.H.R.R. 16, a case concerning subjection of a child to forced labour without remuneration and conditions of servitude, the court held that the failure to enact criminal offences in respect of slavery and servitude gave rise to breach of the systems duty under Article 4 of the ECHR. For Convention purposes "servitude" was defined as an obligation to provide one's services that was imposed by the use of coercion, and was to be linked

with the concept of "slavery". Although the French Criminal Code contained provisions concerning exploitation through labour and subjection to working and living conditions that were incompatible with human dignity, these were too restrictive in scope to protect the applicant's rights under Article 4. In those circumstances, the criminal legislation did not afford the applicant practical and effective protection against the actions of which she was a victim. The court stated at [112]:

> "The Court reiterated that Art.4 enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos 1 and 4, Art.4 makes no provision for exceptions and no derogation from it is permissible under Art.15(2) even in the event of a public emergency threatening the life of the nation. In those circumstances, the Court considers that, in accordance with contemporary norms and trends in this field, the Member States' positive obligations under Art.4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation."

53. Likewise, in *CN v United Kingdom* (2013) 56 EHRR 24, the court held that there was a violation of Article 4 regarding domestic servitude of a young woman. It was common ground that at the time the applicant alleged that she was subjected to treatment falling within the scope of Article 4, such conduct was not specifically criminalised under domestic law. Although there were a number of offences which criminalised certain aspects of slavery, servitude and forced or compulsory labour, the criminal law did not provide for the specific offences prohibited by Article 4. This lacuna in the law was addressed by enacting section 71 of the Coroners and Justice Act 2009 (the predecessor offence to section 1 of the MSA) but it was not brought into commencement so as to apply to the facts of this case. Therefore, the criminal law in force at the material time did not afford practical and effective protection against treatment falling within the scope of Article 4.

54. A similar lacuna in the law was identified in the case of *TI and Others v Greece* (App No. 40311/10, 18 July 2019). The court referred to *Rantsev* regarding the applicability of Article 4 in the context of trafficking in human beings. At the material time, human trafficking for the purposes of sexual exploitation did not constitute a separate criminal offence under Greek domestic law. On that basis, the court held that the legal framework had not been effective or sufficient either to punish the traffickers or to ensure effective prevention of human trafficking and there was a violation of Article 4.

55. A criminal legal framework may be adequate for the purposes of the high-level systems duty notwithstanding the existence of discrepancies and/or practical difficulties in its application. In assessing whether there has been any violation of Article 4, the focus centres on whether the spectrum of safeguards set out in national legislation are adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking: *IC v Republic of Moldova* (Application no. 36436/22) (2025) at [152]-[154].

56. The question whether there has been a failure by the state to comply with its systems duty requires a concrete assessment of the alleged deficiencies rather than an abstract one, as stated in *Fernandes de Oliveira v Portugal* (2019) 69 EHRR 8 at [107]:

> "… The Court's task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant or the deceased gave rise to a violation of the Convention (see Lopes de Sousa Fernandes, cited above, § 188). Therefore, the mere fact that the regulatory framework may be deficient in some respects is not sufficient in itself to raise an issue under Article 2 of the Convention. It must be shown to have operated to the patient's detriment."

The investigative duty

57. Article 4 of the ECHR entails a procedural obligation to investigate potential incidents of trafficking where there is a credible suspicion that Article 4 rights have been violated. In *Rantsev* at [288], the court stated:

> "The requirement to investigate does not depend on a complaint from the victim or next-of-kin: once the matter has come to the attention of the authorities they must act of their own motion … For an investigation to be effective, it must be independent from those implicated in the events. It must also be capable of leading to the identification and punishment of individuals responsible, an obligation not of result but of means. A requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency."

58. This was reiterated and elaborated on in *SM v Croatia* (above), a case concerning a complaint of forced prostitution in respect of an applicant who was identified as a victim of human trafficking. The court confirmed at [303] that human trafficking fell within the scope of Article 4 and that a state's obligations under Article 4 were to be construed in the light of ECAT. The authorities had to act of their own motion once the matter had come to their attention. They could not leave it to the initiative of the victim to take responsibility for the conduct of any investigatory procedures.

> "[315] The procedural obligation is a requirement of means and not of results. There is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable. Thus, the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such.

> [316] Nevertheless, the authorities must take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible.
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> [317] As to the level of scrutiny to be applied by the Court in this regard, it is important to stress that, although the Court has recognised that it must be cautious in taking on the role of a first instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, it has to apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place.
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> [320] … the possible defects in the relevant proceedings and the decision-making process must amount to significant flaws in order to raise an issue under art. 4. In other words, the court is not concerned with allegations of errors or isolated omissions but only significant shortcomings in the proceedings and the relevant decision-making process, namely those that are capable of undermining the investigation's capability of establishing the circumstances of the case or the person responsible. "

59. The investigative duty arises when there is a 'credible suspicion' that a person has been trafficked; it is not necessarily triggered simply on the making of an allegation: *R (Hoang) v SSHD* [2017] INLR 267 per Lord Burnett CJ at [26] & [36].

60. This was considered further by Underhill LJ in *TDT* (above) at [38]:

> "The Strasbourg phrase "credible suspicion" has a slightly odd ring, but the broad sense is clear enough. It corresponds, as I have said, to the concept of "reasonable grounds for suspicion" found in the Convention and the Guidance and represents a relatively low threshold. As Burnett LJ observed in para 35 of his judgment in Hoang, quoted above, the court "is drawing a distinction between mere allegations and those with sufficient foundation to call for an investigation" – or, here, to call for the taking of protective measures. Mr Buttler noted that in CN v United Kingdom (2012) 56 EHRR 24 the Strasbourg court regarded the credible suspicion threshold as having been crossed in a case where the putative victim's account of having been trafficked was "not inherently implausible" …"

61. Where the legislative framework fails to criminalise conduct within the material scope of Article 4 effectively, that will give rise to a breach of the investigative

duty, in addition to a breach of the systems duty, if the consequence is that it precludes a full and proper investigation into the potential incident of trafficking: *CN v UK* (above) at [78]-[80].

62. In *D v Commissioner of the Police for the Metropolis* [2018] UKSC 11, [2019] AC 196, a case concerning Article 3, the Supreme Court held that breach of the investigative duty could arise independently of any breach of the systems duty, where there were serious operational defects:

> "[26] In MC's case, the lack of assiduity in the investigation could be explained because of the inadequacy of that law but it does not follow that deficiencies in investigation, if they are sufficiently egregious, cannot of themselves constitute a violation of article 3. Cases decided after MC's case make that unambiguously clear.
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> …
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> [29] … I accept, however, that simple errors or isolated omission will not give rise to a violation of article 3 at the supra-national and the national levels. That is why, as I point out below, only conspicuous or substantial errors in investigation would qualify … errors in investigation, to give rise to a breach of article 3, must be egregious and significant."

63. The ECtHR set out the test to be applied when a court is determining whether there is a breach of the investigative duty - see *SM v Croatia* (2021) 72 EHRR 1 at [320]:

> "…possible defects in the relevant proceedings and the decision-making process must amount to significant flaws in order to raise an issue under art.4. In other words, the Court is not concerned with allegations of errors or isolated omissions but only significant shortcomings in the proceedings and the relevant decision-making process, namely those that are capable of undermining the investigation's capability of establishing the circumstances of the case or the person responsible."

64. In *FM v Russia* (2024) 58 BHRC 384 the court held that the state failed to comply with its positive obligations under Article 4 to protect the applicants as female migrant workers who had been victims of human trafficking and labour exploitation. Although the Russian criminal code criminalised trafficking in human beings, the authorities decided not to investigate further or prosecute on the grounds that the applicants had consented to their exploitation. This amounted to a lacuna in the law, in that it failed to provide that consent to the intended exploitation should not be an excuse and had no bearing on establishing whether or not trafficking had occurred. Further, there was a failure to carry out an effective criminal investigation so as to identify and prosecute those responsible.

65. The following principles can be derived from the above case law relied on by the parties in this case:

i) Human trafficking as defined by ECAT and the Palermo Convention falls within the scope of Article 4 of the ECHR: *Rantsev* at [282].

ii) Article 4 entails a specific positive obligation on public authorities to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour: *TDT* at [15]-[18].

iii) In order to comply with this obligation, public authorities are required to put in place a legislative and administrative framework, which provides practical and effective protection for the rights of victims, and which prosecutes and punishes conduct prohibited by Article 4: *Rantsev* at [285]; *SM v Croatia* at [305].

iv) It is a matter for each state to determine how to implement its Article 4 obligations; it may discharge its obligations by means of a single criminal offence or by combining several offences, provided that the overall framework is effective to penalise and prosecute trafficking falling within the Article 4 prohibition: *X & Y v Netherlands* at [29]; *MC v Bulgaria* at [150].

v) The starting point is whether there is a conspicuous or substantial lacuna in the material law or practice so as to constitute a breach of the systems duty: *Siliadin* at [112] and [141]-[142]; *CN v UK* at [78]-[80]; *TI v Greece*; *FM v Russia*.

vi) Even where the legislative framework is effective, a breach of the investigative duty can arise independently of any breach of the systems duty: *D v Commissioner of Police* at [26] & [99].

vii) Where there is credible suspicion of human trafficking, public authorities have a duty to institute and conduct an effective investigation, capable of leading to the establishment of the facts, persons responsible and punishing them, which is subjected to careful scrutiny: *Rantsev* at [288]; *Hoang* at [26] and [36]; *TDT* at [38].

viii) In each case, the court must consider whether the impugned legislation and/or its practice and application gave rise to such significant flaws in the proceedings and decision-making processes to amount to breach of the Article 4 duties: *MC v Bulgaria* at [167]; *Fernandes v Portugal* at [107]; *D v Commissioner of Police* at [29]-[30]; SM *v Croatia* at [320]; *IC v Moldova* at [152]-[154].

Ground 1 – the systems duty

66. I start by considering whether the MSA provides an appropriate legislative and administrative framework to prohibit and punish trafficking so as to satisfy the systems duty.

Modern Slavery Act 2015

67. Section 1 of the MSA reflects the Article 4 prohibition on slavery or forced labour and replaces the pre-existing offence in section 71 of the Coroners and Justice Act 2009 as follows:

> "**1 Slavery, servitude and forced or compulsory labour**
>
> (1) A person commits an offence if—
>
> (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or
>
> (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.
>
> (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.
>
> (3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.
>
> (4) For example, regard may be had—
>
> (a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons;
>
> (b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).
>
> (5) The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour."

68. Section 2 of the MSA provides:

> "**2 Human trafficking**

> (1) A person commits an offence if the person arranges or facilitates the travel of another person ("V") with a view to V being exploited.
>
> (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).
>
> (3) A person may in particular arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.
>
> (4) A person arranges or facilitates V's travel with a view to V being exploited only if—
>
> (a) the person intends to exploit V (in any part of the world) during or after the travel, or
>
> (b) the person knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the travel.
>
> (5) "Travel" means –
>
> (a) arriving in, or entering, any country,
>
> (b) departing from any country,
>
> (c) travelling within any country…"

69. Section 3 of the MSA sets out the meaning of exploitation for the purpose of section 2 and provides:

> "**3 Meaning of exploitation**
>
> (1) For the purposes of section 2 a person is exploited only if one or more of the following subsections apply in relation to the person.
>
> **Slavery, servitude and forced or compulsory labour**
>
> (2) The person is the victim of behaviour—
>
> (a) which involves the commission of an offence under section 1, or
>
> (b) which would involve the commission of an offence under that section if it took place in England and Wales.
>
> **Sexual exploitation**
>
> (3) Something is done to or in respect of the person—
>
> (a) which involves the commission of an offence under—

> (i) section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of children), or
>
> (ii) Part 1 of the Sexual Offences Act 2003 (sexual offences), as it has effect in England and Wales, or
>
> (b) which would involve the commission of such an offence if it were done in England and Wales.
>
> **Removal of organs etc**
>
> (4) The person is encouraged, required or expected to do anything—
>
> (a) which involves the commission, by him or her or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) as it has effect in England and Wales, or
>
> (b) which would involve the commission of such an offence, by him or her or another person, if it were done in England and Wales.
>
> **Securing services etc by force, threats or deception**
>
> (5) The person is subjected to force, threats or deception designed to induce him or her—
>
> (a) to provide services of any kind,
>
> (b) to provide another person with benefits of any kind, or
>
> (c) to enable another person to acquire benefits of any kind.
>
> **Securing services etc from children and vulnerable persons**
>
> (6) Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that—
>
> (a) he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and
>
> (b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose."

Principles of statutory interpretation

70. There is no dispute as to the general principles of statutory interpretation. Statutory interpretation involves an objective assessment of the meaning which

a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 per Lord Reid at p.613; *R(O) v SSHD* [2023] *AC* 255 per Lord Hodge at [29]-[31].

71. Legislation should be construed according to the ordinary meaning of the words used because those are the words which Parliament has chosen to express the purpose of the legislation and by the expertise which the drafters of legislation bring to their task: *For Women Scotland Ltd v The Scottish Ministers* [2026] AC 315 at [9]-[12].

72. Legislation must be construed, so far as possible, in a way which best gives effect to its purpose: *Barclays Mercantile Finance Ltd v Mawson* [2005] 1 AC 684 per Lord Nicholls at [28].

73. External aids to interpretation may disclose the background to a statute and assist the court to identify, not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. But they play a secondary role and must not displace the meanings conveyed by the clear and unambiguous words of a provision construed in the context of the statute as a whole: *R(O) v SSHD* (above) at [30]; *For Women Scotland Ltd* (above) at [11].

74. Where a statute sets out a criminal offence, there should be no doubt about what conduct is penalised and what is not: *R v Webb* [2026] 2 Cr App R 3 per Edis LJ at [76]. Citizens must have fair notice of the circumstances in which they may commit the offence set out in statute. This is referred to as the principle against doubtful penalisation in *Bennion, Bailey and Norbury on Statutory Interpretation*, section 26.4: "A person should not be penalised except under clear law"; *R v McCafferty* [2026] UKSC 20 per Lord Sales at [117]-[119].

Parties' submissions on Ground 1

75. Mr Robottom, counsel for CBK, submits that the MSA does not provide an effective legislative framework for the penalisation of trafficking for organ removal where no reward is involved. It is common ground that section 3(4), the provision specifically directed to organ removal, requires a reward to be given or offered, and therefore that provision does not apply to CBK's case. The provisions on which SSHD relies, namely sections 3(5) and 3(6), do not effectively capture either organ removal cases, or the full range of "means" by which trafficking for organ removal is in fact committed. In particular, they do not cover abuse of power and abuse of a position of vulnerability, which were among the means used to exploit CBK. The legislative framework therefore fails the requirement of practical and effective protection imposed by Article 4 of the ECHR.

76. Ms Reeves, counsel for SSHD, submits that on a proper construction, sections 3(5) and 3(6) afford practical and effective protection against organ removal (including cases without reward) falling within Article 4, and did afford such protection to CBK. SSHD disputes CBK's assertion that it is established that Obeta abused his power and that CBK was in a position of vulnerability. CBK's

witness statement does not evidence that Obeta abused his power or that CBK was in a position of vulnerability. Furthermore, that statement is materially inconsistent with the evidence disclosed by the MPS during these proceedings, which refers to CBK believing Obeta to be wealthy as he was able to privately fund the hospital treatment, whereas messages between them shows that CBK knew Obeta was crowdfunding for the kidney transplant operation. On that basis, even if the legal framework precludes consideration of the "means", it cannot be shown that this has operated to CBK's detriment.

Discussion on Ground 1

77. The elements of the offence of human trafficking set out in section 2 are, firstly, the *actus reus* of arranging or facilitating the travel of the victim and, secondly, the *mens rea*, that is, for the purpose of exploitation. The necessary act is defined in broad terms in section 2(3), incorporating and expanding the descriptions of the act set out in Article 3 of the Palermo Protocol and Article 4 of the ECAT. The mental element in section 2(4) is described as intention to exploit. Thus, the essential elements of the offence do not require proof of any exploitation; it is sufficient to establish the relevant act and intent.

78. The essential elements of the offence do not include any requirement to establish the *means* by which the act is facilitated. This constitutes a departure from the definition of trafficking in Article 3 of the Palermo Protocol and Article 4 of the ECAT. It is in line with the interpretation of trafficking for the purpose of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 as explained in *R v Karemera* [2018] EWCA Crim 1432 per Hallett LJ at [44]-[48].

79. The same approach to interpretation was adopted in relation to the MSA in *R v How* [2026] EWCA Crim 476 per VP Edis LJ:

> "[27] The principal focus of the court in an issue of this kind is the words used by Parliament in the statute under construction. We should first look at the offence-creating provision itself which is section 2(1). This defines the offence without reference to the use of any of the "means" described in Article 4 of ECAT. Unless the words are read into it, it is enough if travel is arranged or facilitated by any means with a view to exploitation.
>
> [28] Section 2(3) gives a list of examples (it is not an exhaustive list) of ways in which travel may be arranged or facilitated. That list is taken from Article 4 of ECAT. The only thing section 2 (in very sharp contrast with Article 4) says about the means by which the recruitment, transporting or transferring, harbouring or receiving, or transferring or exchanging control is achieved is in sub-section (2):
>
> > "It is irrelevant whether V consents to the travel (whether V is an adult or a child)."

> [29] Article 4 says that the consent of the victim to the intended exploitation is irrelevant. It does not say that consent to the travel is irrelevant, because the "means" by which it requires that travel to have been procured would all negate consent. Section 2(2) of the MSA 2015 is therefore materially, and intentionally, inconsistent with Article 4.
>
> …
>
> [31] Consent to the travel is irrelevant by section 2(2), but the words of Article 4(b) "where any of the means set forth in subparagraph (a) have been used" are not added to this subsection. We are invited to read them in, although it is hardly likely that their omission was an accident. Parliament must be taken to have carefully considered how to enact the obligations contained in ECAT into national law and to have paid particular attention to the words of Article 4. That it did so is clear from the use in section 2 of many of the phrases which appear in Article 4. The omissions are, therefore, significant in construing the effect of the provision.
>
> …
>
> [42] … Section 2 does catch the conduct which ECAT requires the United Kingdom to criminalise. The question is whether it does more than that, and the Explanatory Notes are silent on that subject."

80. Thus, it is sufficient to prove the relevant action, together with the requisite intention to exploit, to establish an offence under section 2 of the MSA. That this reflects what was intended by Parliament is borne out by reference to extracts from the debate on the Modern Slavery Bill by the Public Bill Committee, House of Commons on 4 September 2014, which indicate that the MSA was drafted to be broad in scope and to cover new and emerging forms of trafficking.

81. Section 3(1) provides that the sub-sections that follow contain an exhaustive definition of "exploitation" for the purpose of the MSA.

82. Sub-sections (2) to (4) of section 3 define exploitation by reference to other substantive offences, expressly extended to have extra-territorial effect, namely: section 3(2) - slavery or forced labour contrary to section 1 of the MSA; section 3(3) - sexual offences contrary to the Protection of Children Act 1978 or Sexual Offences Act 2003; and section 3(4) – commercial dealings in organs contrary to sections 32 and 33 of the Human Tissue Act 2004, limited to circumstances where a reward (in the form of financial or other material advantage) is given, received or offered. These are aligned with, but do not replicate, the non-exhaustive examples of exploitation set out in Article 3 of the Palermo Protocol and Article 4 of the ECAT.

83. Of particular significance in this case, "the removal of organs" defined in section 3(4) of the MSA is restricted to conduct that would involve the commission of an offence under sections 32 and 33 of the Human Tissue Act 2004 ("the HTA").

84. Section 32 of the HTA provides:

> "**Prohibition of commercial dealings in human material for transplantation**
>
> (1) A person commits an offence if he–
>
> (a) gives or receives a reward for the supply of, or for an offer to supply, any controlled material;
>
> (b) seeks to find a person willing to supply any controlled material for reward;
>
> (c) offers to supply any controlled material for reward;
>
> (d) initiates or negotiates any arrangement involving the giving of a reward for the supply of, or for an offer to supply, any controlled material;
>
> (e) takes part in the management or control of a body of persons corporate or unincorporate whose activities consist of or include the initiation or negotiation of such arrangements.
>
> …
>
> (7) References in subsections (1) and (2) to reward, in relation to the supply of any controlled material, do not include payment in money or money's worth for defraying or reimbursing–
>
> (a) any expenses incurred in, or in connection with, transporting, removing, preparing, preserving or storing the material.
>
> (8) For the purposes of this section, controlled material is any material which–
>
> (a) consists of or includes human cells,
>
> (b) is, or is intended to be removed, from a human body,
>
> (c) is intended to be used for the purpose of transplantation, and
>
> (d) is not of a kind excepted under subsection (9)."

85. Section 33 of the HTA provides:

> "**Restriction on transplants involving a live donor**

> (1) Subject to subsections (3) and (5), a person commits an offence if–
>
> (a) he removes any transplantable material from the body of a living person intending that the material be used for the purpose of transplantation, and
>
> (b) when he removes the material, he knows, or might reasonably be expected to know, that the person from whose body he removes the material is alive.
>
> …
>
> (3) The Secretary of State may by regulations provide that subsection (1) … shall not apply in a case where–
>
> (a) the Authority is satisfied–
>
> (i) that no reward has been or is to be given in contravention of section 32, and
>
> (ii) that such other conditions as are specified in the regulations are satisfied, and
>
> (b) such other requirements as are specified in the regulations are complied with."

86. Mr Robottom submits that the scope of the provision in section 3(4) of the MSA is narrower than the "removal of organs" referred to as exploitation in the international definition of trafficking. It is said that SSHD's construction is contrary to the principle that the general does not derogate from the specific. Parliament has legislated for organ removal specifically: section 3(4) is the sub-section headed "Removal of organs etc" and it is, according to paragraph 33 of the Explanatory Notes, the provision "intended to include trafficking for organ removal or for the sale of human tissue". Parliament chose to define that exploitation by reference to the Human Tissue Act 2004.

87. It is common ground that, as drafted, section 3(4) does not cover organ removal in the absence of reward. The prohibition of commercial dealings in organs and restrictions on use of live donors reflects the delicate balance under the HTA between altruistic donations of human tissue and organs, which are permitted subject to appropriate safeguards, and exploitation or trade in human tissue and organs, which is criminalised. Not all instances of tissue or organ donation will involve exploitation. Leaving aside objections on religious grounds, there would be no cause for moral outrage in most reasonable people where a person arranged and paid for travel for another person who freely wished to donate an organ without reward, as an act of altruism. There is no suggestion in the EU or domestic case law that a selfless act of organ donation would or should be caught by Article 4 as trafficking. It follows that not every act of "removal of organs" amounts to "exploitation" for the purpose of Article 4.

88. It is said by CBK that the natural meaning of sections 3(5) and (6) does not reach organ removal procured by abuse of power or vulnerability. The language of "service" and "benefit" does not naturally describe the removal of an organ. Even if "service" or "benefit" could be stretched to embrace the removal of an organ, these subsections reach only organ removal procured by "force", "threats" and "deception". Where Parliament intended to protect the vulnerable, it did so through an exhaustive and narrow list under section 3(6): children, those who are ill or disabled, and those in a particular family relationship. A poor, isolated, poorly-educated adult migrant with insecure immigration status is not within it.

89. On a natural and ordinary meaning of the words, section 3(5) introduces a broad definition of exploitation that is not linked to any specific pre-existing offence. It provides that the use of force, threats or deception, designed to induce the victim to provide services, benefits, or enable another person to acquire benefits of any kind, amounts to exploitation for the purpose of the MSA.

90. It is acknowledged that this is a penal statute and, as set out above, it is an important principle of statutory construction that, as far as the wording allows, there should be no doubt about what conduct is penalised and what is not. However, notwithstanding the need to ensure certainty, it is open to Parliament to define the offending conduct in broad terms, particularly where, as in this case, the stated intention is to capture new and emerging forms of exploitation.

91. I reject Mr Robottom's submission that the language of "service" and "benefit" do not extend to organ removal. The words used are capable of applying to a case where force, threats or deception are used to induce a victim to agree to organ removal, a service, and donate that organ to another person, a benefit, in the absence of financial or other reward.

92. Section 3(6) is more circumscribed and provides that there is exploitation for the purpose of the MSA where the victim is selected because he or she is a child or other specified vulnerable person and used to provide services, benefits, or enable another person to acquire benefits of any kind.

93. It is said by CBK that a purposive interpretation cannot supply words Parliament omitted. The words "abuse of power" and "abuse of a position of vulnerability" are simply not present in sections 3(5) and 3(6), and to read them in would not give those provisions a meaning that is predictable so that citizens can regulate their conduct accordingly.

94. In the context of this argument, the court's attention has been brought to various explanatory notes as a permissible aid to construction, in identifying the mischief against which the legislation is aimed: *R v How* [2026] EWCA Crim 476 at [22].

95. Paragraph 83 of the ECAT Explanatory Report provides guidance on what is understood by abuse of a position of vulnerability ("APOV"):

> "By abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable

> alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce."

96. The United Nations Office on Drugs and Crime ("UNODC") has published a legislative guide to the Palermo Protocol that contains further explanation:

> "104. Abuse of a position of vulnerability comprises two components: proof of the existence of a position of vulnerability on the part of the victim and proof of abuse of that vulnerability.
>
> 105. The existence of vulnerability is best assessed on a case-by-case basis, taking into consideration the personal, situational or circumstantial situation of the alleged victim. Personal vulnerability for instance, may relate to a person's physical or mental disability. Situational vulnerability may relate to a person being irregularly in a foreign country in which he or she is socially or linguistically isolated. Circumstantial vulnerability may relate to a person's unemployment or economic destitution.
>
> …
>
> 108. Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of … the reference to the abuse of a position of vulnerability is understood to refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved. This describes the effect of the behaviour by the accused on the person to whom it is directed at.
>
> …
>
> 110. Vulnerability and its abuse are sometimes used as a subsidiary means to substantiate other means. For example, deception may take place through the abuse of a position of vulnerability, where a less vulnerable person would not have been deceived. A position of vulnerability can also explain why a victim does not identify as a victim and might appear to consent to trafficking, but still has the right to assistance and protection."

97. UNODC has published a guidance note on abuse of a position of vulnerability ("APOV") as a means of trafficking in persons, including the following:

> "2.4. Critically, a victim's vulnerability may be an indicator of APOV, but it will not constitute a means of trafficking in persons unless that situation of vulnerability has also been abused to the extent that the victim's consent is negated.
>
> …
>
> 4.2 … A finding of APOV depends only on credible evidence that establishes the existence of a position of vulnerability on the part of the victim and an abuse of that position of vulnerability by the trafficker for the purpose of exploiting the victim. The particular form of the exploitative purpose in a specific case is not relevant to that analysis.
>
> …
>
> 6.1. The lack of a clear definition of APOV and resulting ambiguities create certain risks that should be identified and managed. Misapplication of the concept could potentially compromise the rights of victims to be recognized as such, as well as the rights of accused persons to a fair trial. There is also a risk that misapplication could lead to an expansion of the concept of trafficking that detracts from its essential nature as an extremely serious crime and violation of human rights.
>
> 6.2. Where the concept of APOV is explicitly included in the definition of trafficking in domestic legislation, it should be carefully defined to provide clarity and guidance to practitioners and to protect against the risks outlined above. The definition should confirm the necessity of establishing both the existence of a position of vulnerability and the offender's abuse of that position of vulnerability. The definition should also take into account the issue of consent so that APOV, however it is defined, is of a sufficiently serious character as to negate consent.
>
> 6.3. Trafficking in persons is a serious crime that carries severe penalties. Safeguards should be put in place to ensure that a common sense approach can be taken to understanding and applying APOV, to promote an effective criminal justice response to trafficking and protect against the risks outlined above."

98. There are common threads running through the above explanatory guides.

i) APOV comprises two essential components: a position of vulnerability on the part of the victim and abuse of that vulnerability.

ii) Establishment of a position of vulnerability on the part of the victim requires a fact-specific inquiry. Vulnerability may arise in diverse circumstances, such as physical or mental impairment, social isolation or exclusion, or economic hardship.

iii) Abuse of that vulnerability requires more than simply taking advantage of the victim's generosity or goodwill. It involves exertion of physical or psychological pressure in circumstances where the victim has no real and acceptable alternative but to submit. The impact of such pressure on the victim must be sufficiently serious to negate consent.

iv) Deception may be evidence of abuse of a position of vulnerability, where a less vulnerable person would not have been deceived.

v) The form of exploitative purpose, whether slavery, sexual exploitation or organ removal, is not relevant to the analysis as to whether there has been abuse of a vulnerable person.

vi) Caution is urged regarding attempts to explicitly include APOV in the definition of trafficking in domestic legislation. Ambiguities in the definition of APOV could give rise to unintended consequences, such as an expansion of the concept of trafficking that detracts from its essential nature as an extremely serious crime and violation of human rights.

99. CBK relies on an evaluation report for the United Kingdom dated 5 May 2026 on implementation of ECAT published by the Group of Experts on Action against Trafficking in Human Beings ("GRETA"). The report expresses an opinion that the notion of abuse of a position of vulnerability is not part of the offence of human trafficking in any of the relevant legislation in the UK. However, that opinion appears to be based on the authors' interpretation of the words used, rather than any legal authority on the proper interpretation of the MSA. As set out in the explanatory guidance, a cautious approach is encouraged when considering whether to include in domestic legislation a fixed definition of APOV.

100. An independent review of the MSA was commissioned by SSHD, conducted by Frank Field MP (chair), Maria Miller MP and the Baroness Butler-Sloss. Their report was published in May 2019. One of the tasks of the Review was to consider the definition of exploitation in section 3 of the MSA:

> "2.1.1 There was no consensus among stakeholders regarding the current scope of the Act's definition of exploitation, and specifically whether it was broad enough to capture new and emerging forms of modern slavery and trafficking.
>
> 2.1.2 Some stakeholders expressed strong views that the current definition should be amended to explicitly reflect new and emerging forms of exploitation, such as county lines and orphanage trafficking. There were concerns that individuals committing orphanage trafficking and county lines offences could escape prosecution as these offences are not explicitly referenced on the face of the Act.
>
> 2.1.3 However, the Crown Prosecution Service (CPS) has found the definition to be broad enough to prosecute a range of

> offences, including recently county lines offending, and does not suggest a new definition of exploitation. …
>
> 2.1.4 The CPS has reported that the definition of exploitation is flexible enough to enable them to bring prosecutions in a broad range of cases. It has warned against expanding the scope of the meaning of exploitation or defining exploitation so precisely that it would lack flexibility when applying the legislation to a changing profile of criminal conduct.
>
> 2.1.5 We agree. Section 3 on the meaning of exploitation should not be amended as it is sufficiently flexible to meet a range of circumstances, including new and emerging forms of modern slavery. While we are in no doubt about the seriousness of new types of exploitation that have come to light since the passing of the Act, such as county lines and orphanage trafficking, it is not practical to amend legislation every time a new form of exploitation is identified. Government instead should produce policy guidance to assist in the interpretation of the Act, building on the Home Office Typology of Modern Slavery research. This should be regularly updated to respond to new and emerging trends and should give examples of the types of exploitation that can potentially be prosecuted under the Act, including orphanage trafficking and county lines."

101. The Review considered but rejected the addition of a standalone offence of exploitation, where the conduct failed to meet the threshold for other defined exploitation, explaining that allowing a much lower level of exploitation to be captured rather than relying on other existing offences would weaken the MSA and divert attention from serious abuse. This echoes the concerns set out in the explanatory documents referred to above.

102. Against the background of the Review and other guidance, there is no justification for criticising the decision of the legislators not to explicitly define abuse of a position of vulnerability as a separate form of modern slavery or trafficking in the MSA.

103. As set out above, it is not sufficient to identify someone as vulnerable for the purpose of establishing trafficking within the meaning of Article 4 of ECAT. It is necessary to show abuse of that vulnerability for the purpose of exploitation before it amounts to a serious violation of human rights. The material factor is whether there is abuse that negates consent; whether the vulnerable person feels that they have no alternative but to comply with the demand. That concept is captured by the words used in section 3(5), namely, the use of force, threats or deception.

104. In my judgment, the MSA is sufficiently broad in scope to cover a situation where a person agrees to donate an organ without any reward, provided the act of trafficking together with abuse that negates consent are established, without criminalising acts of genuine altruism.

105. For the above reasons, on a proper construction of sections 3(5) and 3(6) of the MSA, trafficking for organ removal by means of abuse of power or abuse of vulnerability, where no reward is given or offered, is capable of amounting to an offence.

106. It follows that there is no breach of the systems duty under Article 4 of the ECHR.

Ground 2 – investigative duty

107. CBK's primary case on Ground 2 is that the absence of Article 4 compliant effective legislation founds both a systems breach and investigative breach. The alleged failure of the legislative framework to effectively penalise trafficking for organ removal where there is no reward, precluded investigating officers from considering or focusing on Obeta's exploitation of CBK by means of his position of power and CBK's vulnerability.

108. Given the court's finding on Ground 1, this primary argument on Ground 2 falls away.

109. CBK's alternative case is that if, contrary to Ground 1, sections 3(5) and 3(6) do provide an effective and practical legislative framework for penalising trafficking for organ removal through abuse of power and abuse of vulnerability, then MSCE: (i) misdirected itself as to the law, (ii) failed to pursue reasonable lines of enquiry and (iii) failed to initiate the search for CBK sufficiently quickly. These failures constitute a breach of the investigative duty for which MPS is responsible.

110. MPS's response is that the investigating officers properly applied the statutory criteria and were entitled to conclude that there was (and remains) insufficient evidence to prosecute Dr Obeta under sections 2 and 3(5) of the MSA 2015. The investigating officers were considering the quality of evidence CBK had provided as to 'deception' up to 17 April 2025. That evidence was (and remains) inadequate to establish a clear undertaking by Dr Obeta to take care of him in a specific way; or a breach of that undertaking. There is, accordingly, insufficient evidence of 'deception'.

111. When considering whether MPS satisfied its obligations under the investigative duty, I bear in mind the following applicable principles helpfully summarised by Mr Davies KC, leading counsel for MPS.

112. Article 4 of the ECHR should not be interpreted in a way which imposes an impossible or disproportionate burden on the authorities bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources: *Osman v United Kingdom* (1998) 29 EHRR 245 at [116] p.305.

113. The court is only concerned with egregious and significant shortcomings in the proceedings and the relevant decision-making process, namely those that are capable of undermining the investigation's capability of establishing the circumstances of the case or the persons responsible: *SM v Croatia* (above) at

[320]. Errors and isolated omissions will not suffice to establish liability under Article 4: *R(D) v Commissioner of Police of the Metropolis* [2019] AC 196 at [29] and [98].

114. The investigative duty under Article 4 of the ECHR is an obligation of means not results. Investigations must be capable of leading to the identification and punishment of individuals responsible but there is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences to account. The burden upon the authorities is to take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case and must be based on thorough, objective and impartial analysis of all relevant elements: *SM v Croatia* (above) at [315]-[316].

115. While decisions taken in the exercise of discretion by police and prosecuting authorities are amenable to judicial review, the power to quash such decisions should only be exercised sparingly: *Chief Constable of Kent County Constabulary, ex parte L* [1993] 1 All ER 756 per Watkins LJ at pp.767-768; *R v DPP, ex parte Manning* [2001] QB 330 per Lord Bingham CJ at [21]-[23].

(i) Misdirection

116. It is reasonably clear that the MSCE team and the CPS initially misunderstood the scope of the MSA and limited their consideration to whether there was any offence under section 3(4). The initial NFA decision was based on the absence of any reward, as set out in DS Owen's email dated 1 October 2024. It is common ground that in the absence of any reward, or offer of a reward, there was no section 3(4) offence.

117. On 1 March 2026 an investigative guide, entitled "Human Tissue Act – Investigative Guide" was published, as part of Project Turnstone, to support law enforcement agencies investigating offences under the HTA. It directs officers that if the elements of the HTA offence are not made out, because there was no offer or provision of reward, then a prosecution could still be considered under sections 3(5) and 3(6) of the MSA. That guidance was not available to the MSCE team at the relevant time.

118. CBK's evidence as set out in his witness statement for the purpose of these proceedings is as follows:

> "9. When working on my market stall, around 2019-2020, I noticed a particular customer coming regularly to buy things. This was Dr Obeta. I had no previous connections to him, and just knew him as a customer.
>
> 10. Over the course of time, Dr Obeta informed me that he was very sick and needed to find a kidney donor. He said if he didn't find a donor he would die. I felt very sorry for him.
>
> 11. Eventually, I said I was willing to act as a donor because I wanted to help him. He didn't offer me any money in return. I

> guess I felt a sense of loyalty to him as a good customer who helped me bring an income in. Making money on my market stall was not always easy.
>
> 12. He did say that after the operation he would take care of me. I took this to mean he would provide me with everything I would need for my recovery. For example, I presumed that I would be given an allowance to pay for things like food during my recovery period.
>
> 13. I also presumed that, as healthcare in Nigeria is only available for those who can afford it, Dr Obeta would pay for my aftercare (both in the UK and Nigeria if necessary). I thought that, as a medical doctor, who ran some hospitals in Nigeria, he would have both the wealth, expertise and ability to support me."

119. As set out above, under the NRM, SSHD has concluded that CBK was a victim of modern slavery for the purpose of organ harvesting. However, as explained by DI Richardson in her witness statement, the NRM referral procedure is a safeguarding mechanism and the threshold for a referral is low, namely, reasonable grounds to believe that the person referred is a victim of modern slavery. In contrast, an offence under section 3(5) of the MSA must be proved to the criminal standard and the threshold for referral to the CPS is whether the available evidence provides a realistic prospect of a successful conviction. The evidence in support of a referral must be admissible and credible.

120. The evidence available to MPS at the time of the Decision was that both Dr Obeta and CBK were clear that no payment or other reward was offered or asked for in respect of the kidney donation. Further, when CBK's phone was analysed, the messages between CBK and Dr Obeta suggested that they remained in contact and on good terms after the kidney donation, CBK had obtained work in the United Kingdom with Dr Obeta's assistance, and CBK was involved in recruiting the victim in the Related Conspiracy. None of this would preclude a finding that CBK was a victim of modern slavery, on the balance of probabilities, but it could undermine the prospect of a successful prosecution of Dr Obeta in respect of an offence under the MSA.

121. Notwithstanding its initial misdirection, as part of the VRR exercise, the MSCE team considered whether there was evidence that would support a prosecution under other legislative provisions, including sections 2 and 3(5) of the MSA, based on threat or deception. In the Decision dated 17 April 2025, DS Owen explained:

> "I consider that in order to prove the elements of this offence, it may be sufficient to show that the service provided was donation of a kidney and the benefit to another (Obinna Obeta) would be his improved health.
>
> However, it is also necessary to prove an element of deception. In this case, there is no evidence of travel due to deception as

> CBK has stated to police that this was for the purpose of altruistically donating his kidney to Obinna Obeta.
>
> The suggested deception is that that Obinna Obeta agreed to 'take care' of after his operation and subsequently failed to do so. When questioned further about the extent that Obinna would take care of him during his VRI, stated they 'did not discuss anything'. They 'never talked about it just that he was going to take care' of him. There is therefore no evidence regarding any agreement to the level or extent of aftercare that would be provided. It was not discussed that this aftercare was dependant on consent to provide his Kidney.
>
> CBK and Obinna remained in contact for some time after the procedure. Obinna arranged accommodation for (the address where CBK was located). This was initially a room and only later deteriorated in condition when a new family moved in. It is also understood that Obinna arranged work for CBK and by association, financial support. Therefore a level of 'taking care' of had begun.
>
> CBK was unable to pinpoint when this contact ceased.
>
> Upon analysing phone messages, it appears contact ceases shortly after 23/06/2022. This is the date Ike and Beatrice Ekweremadu were charged and featured in the national and international press. We are therefore unable to confirm if this contact ceased due to a deception on Obinna's part, never to provide aftercare, or if this was due to revelation of this offence resulting in his arrest and remand in July 2022.
>
> There is therefore insufficient evidence of deception.
>
> There is insufficient evidence for this offence and advise No Further Action to be taken."

122. Although the MSCE team initially failed to consider all potentially relevant provisions of the MSA, there was no material misdirection that impacted the final decision the subject of this judicial review. The Decision was taken by reference to the test under the appropriate sections of the MSA. Therefore, the statutory framework did not preclude the officers of the MSCE from carrying out a full and effective investigation into a potential criminal offence under the MSA.

(ii) Operational failures

123. CBK relies on a number of alleged operational failures as giving rise to breach of the investigative duty.

124. CBK complains that Dr Obeta was never interviewed under caution about his exploitation of CBK. The issue as to whether or not to carry out a further

interview was a decision for the investigating officers. Against the detailed account obtained from Dr Obeta during his evidence at the Related Conspiracy trial, it could not be said that it was unreasonable for the officers to take the view that it was unnecessary to interview him, particularly in circumstances where no allegation of exploitation was made by CBK.

125. CBK complains that he was not re-interviewed to ascertain the extent of the abuse by Dr Obeta of his power and of CBK's vulnerability, notwithstanding DS Owen's view that CBK had come to recognise himself as a victim. As above, this was a reasonable operational decision taken by the investigating officers. A referral under the NRM was made very promptly; it was appropriate that CBK's safety and welfare were prioritised. In his interview, CBK stated that he was not forced to donate his kidney and he was not paid for doing so. In those circumstances, it could not be said that it was unreasonable for the officers to respect CBK's statement that he had nothing further to add.

126. CBK is critical that the case file was not referred to the CPS for early advice, despite that course being recommended in modern slavery cases under the Director's Guidance on Charging. However, there is no indication that this would have resulted in a different outcome, having regard to the Decision ultimately made.

127. Complaint is made that CBK was not assessed by a trafficking expert, psychologist or psychiatrist to evaluate the psychological vulnerability or susceptibility that made him more likely to submit to Dr Obeta. It is likely that such assessment would identify CBK as vulnerable, having regard to his poverty, respect for Dr Obeta's status and his social isolation once in the UK. However, the messages available between Dr Obeta and CBK indicated a level of friendship that was not tainted by coercion or control. CBK denied that he was subject to any force, threats or deception. He stated that he agreed to donate his kidney to Dr Obeta because he wanted to help him. It may well be the case that CBK now regrets donating his kidney and considers that Dr Obeta took advantage of his generous nature. But that alone is not sufficient to amount to abuse. In the absence of evidence of abuse of CBK's vulnerability that was sufficiently serious to negate consent, there would not be sufficient basis for a prosecution under section 3(5) of the MSA.

(iii) Delay in locating CBK

128. Mr Robottom submits that the failure of the MSCE team to search for CBK prior to September 2023 constituted a further breach of the investigative duty.

129. DI Richardson explains the steps taken to identify and find CBK as part of the Related Conspiracy investigation:

> "30. During the early stages of the first investigation concerning Dr Obeta and others, I became concerned that there may be other potential victims of trafficking who had been preyed on by the criminal network.

> 31. While no allegations had been made to Police, I ensured that the Human Tissue Authority reviewed its data (covering some 6 years) to establish whether this was the case. As a result, we ascertained that Dr Obeta had already undergone his own kidney transplant in 2021. This was a red flag to me and the investigation team. It was at this stage that the Claimant was identified. A UK address in East Ham, London was ascertained for the Claimant dating back to February 2021 showing that he would be resident at this address for 10 days.
>
> 32. At that stage we were unsure whether the Claimant would still be residing at the address such a considerable time later. Enquiries were therefore made with British Airways which led police to believe that Claimant had left the country and had flown back to Nigeria. Just before the trial commenced in January 2023 further enquiries were conducted by our team which revealed that the Claimant had in fact never boarded a plane and was believed to still be in the UK. It also transpired that the Claimant knew the first victim as both had worked at the street market in Lagos. "

130. After the trial in the Related Conspiracy, police searched for CBK, who was considered to be a potential victim of trafficking. When he was found, the police engaged with him and, following interview, persuaded him to be entered into the NRM as a potential victim of modern slavery for the purpose of organ harvesting.

131. DI Richardson acknowledges the delay of some seven months between the trial and a renewed search for CBK in her second witness statement and offers the following explanation. Firstly, the focus was on the Related Conspiracy trial, which lasted from January through to March 2023, with sentencing on 5 May 2023. That trial was the first prosecution in the UK for organ harvesting, it was a high-profile case involving a senior political figure and a vulnerable victim who had been found. Secondly, during this period, the MSCE team had limited staffing resources and was dealing with 11 other investigations, which demanded priority attention as they involved multiple victims.

132. Given the burden on the limited resources of the MPS during the period of delay, it could not be said that it was unreasonable for the Related Conspiracy trial and other investigations to be prioritised over the search for CBK; still less could that operational choice, even if in error, be described as egregious or significant so as to constitute a breach of the investigative duty.

Conclusion

133. In conclusion, for the reasons set out above:

i) Sections 2 and 3 of the Modern Slavery Act 2015 provide an effective and practical framework, in compliance with the high-level systems duty under Article 4 ECHR, for the penalisation of human trafficking for the purpose of organ removal where (i) no reward is given or offered and

(ii) the means of trafficking are abuse of power and/or abuse of a position of vulnerability.

ii) Properly construed, sections 3(5) and/or 3(6) may apply to human trafficking for the purpose of organ removal where no reward is given or offered if there is other evidence of exploitation.

iii) Properly construed, sections 3(5) and/or 3(6) may apply to human trafficking for the purpose of organ removal where the means of trafficking are abuse of power and/or abuse of a position of vulnerability.

iv) It follows that sections 3(5) and 3(6) provide an effective and practical framework for penalising such conduct.

v) There was an effective investigation into CBK's case, in compliance with the investigative duty under Article 4. Initially MPS misconstrued sections 3(5) and 3(6) but such error was transient and did not render the investigation into CBK's case ineffective.

vi) Although there was delay in locating CBK, there was no egregious or significant error and there was an effective investigation of his case.

134. In summary, there was no breach of Article 4 of the ECHR on the part of SSHD or MPS.

135. In the light of the answers on Grounds 1 and 2 above, CBK is not entitled to any relief and the claim is dismissed.