Bar Council Law Reform Lecture 2026: Modern Slavery in 2026
Mrs Justice Eady DBE
2 July 2026

1. I would first like to thank the Bar Council Law Reform Committee for inviting me to speak at this lecture. Not only is this a great honour – I have noted with some trepidation the roll-call of distinguished speakers from former years, and the CVs of the eminent members of the guest panel – but it is also a real privilege to be able to speak at the committee's final lecture under the chairwomanship of Eleena Misra KC, rightly recognised as one of our top discrimination, employment and regulatory lawyers. Eleena, I should add, is a dangerously persuasive advocate. Having caught me at a Christmas event, just before the end of term, she was able to secure my agreement to speak at a lecture some six months later; something that did not seem as daunting at that stage as it does now.

2. And it is daunting in part because an event of this nature presents particular pitfalls for a judge, given the obvious limitations on what we should – or should not – say. My oath is to apply the law, not to reform it. That is, on the whole, a genuine relief: it is truly liberating not to have to have a hot-take on what the law *should* be in any particular moment, but, instead, to be able to take time to reflect and reach a judgment purely on what the law requires on the particular facts of a specific case. It does, however, tend to mean – as Lord Justice Bean once observed – that a judicial lecture is pitched at such a level of generality that the discussion is insipid, and better value would be provided by an academic, or advocate who would be prepared to express rather more polemical views.

Success for me tonight must thus be limited to an attempt to inform and entertain, while remaining entirely insipid; a challenge to which I will now seek to aspire.

3. Considering how to approach the issue of modern slavery in 2026, the judicial view may be informed by cases in a wide range of jurisdictions. Issues of modern slavery can arise for judicial determination in the crown court, on extradition appeals, in determining claims for judicial review, or in the field of immigration and asylum; it is a sad truth that questions of modern slavery can be front and centre of the case before the court in a variety of situations. Deciding on which area of law to focus for tonight's purposes involved a choice, but where I have ended up reflects my professional background, not a view as to the comparative importance of the issues raised. My contribution will thus look at modern slavery issues from an employment law perspective. I will not, however, focus on the regulatory obligations imposed on larger employers under the Modern Slavery Act 2015; evidence shows that labour exploitation occurs alongside other breaches of employment law rights – absent contracts, withheld wages, difficulties in enforcement of rights – and I want to look at how *these* issues have been addressed by the courts in the context of four cases that can be seen to fall within the definition of forced or compulsory labour, and/or human trafficking for the purposes of sections 1 and 2 of the 2015 Act.

4. I want to first consider the Supreme Court's ruling in the case of *Hounga v Allen*[1].

[1] [2014] UKSC 47

5. Miss Hounga was from Nigeria, and had worked in that country for Mrs Allen's brother. Mrs Allen was a joint Nigerian and British national who lived in England with her husband and three children, and Miss Hounga agreed to come to the UK to work for her as a domestic helper. At the time Miss Hounga was about 14, spoke good English, but was uneducated and illiterate; she was promised an education, £50 per month, and bed and board if she came to work for Mrs Allen in the UK. Directed by Mrs Allen's brother, Miss Hounga lied about her age and her connection with the Allen family, securing a Nigerian passport and entry clearance for the UK. When she arrived at Heathrow, she told an immigration officer she was visiting her grandmother, and her passport was indorsed with a visitor's visa, valid for six months.

6. In fact, Miss Hounga was met at the airport by Mrs Allen, and taken to her home where, for the next 18 months, she worked carrying out childcare and housework. To the extent she left the house, it was with the family; she was never enrolled in a school and, although provided with bed and board, was never paid any wages. Miss Hounga also suffered serious physical abuse at the hands of Mrs Allen, who told her that, if she left the house and was found by the police, she would be sent to prison because her presence in the UK was illegal. One evening, Mrs Allen attacked Miss Hounga and beat her, poured water over her, and pushed her out, telling her to leave the house and die. Having slept in the garden in her wet clothes, at 7:00 am Miss Hounga tried to get back into the house but no one would

open the door; she then made her way to a supermarket car-park, where she was found and taken to social services.

7. In due course Miss Hounga issued a variety of claims against Mrs Allen in the employment tribunal; broadly speaking they fell into two groups: claims founded upon a contract of service (unfair dismissal, unpaid wages and so on), and claims of unlawful race discrimination. Mrs Allen denied the claims, and raised a defence of illegality.

8. Finding that Miss Hounga had knowingly made false assertions to obtain her passport and to secure the right to enter the UK, and had also known it was illegal for her to remain in the UK after six months and to take up any employment, the employment tribunal dismissed the various contract claims, on the basis that her contract was void for illegality, but it upheld her claim of racially discriminatory dismissal and ordered Mrs Allen to pay compensation for injury to feelings.

9. Both sides appealed to the EAT; both lost. Miss Hounga did not pursue her contract claims further, but Mrs Allen again appealed the race discrimination award, and succeeded before the Court of Appeal on the basis that the illegality of the contract of employment formed a material part of the discrimination complaint and to uphold it would be to condone the illegality. It was Miss Hounga's appeal against that decision that then came before the Supreme Court.

10. Upholding Miss Hounga's appeal, the Court considered that the entry into, and operation of, the illegal contract provided "*no more than the context in which Mrs Allen then perpetrated the acts of physical, verbal and emotional abuse by which, among other things, she dismissed Miss Hounga from her employment*". The majority (Lord Wilson, Lady Hale, Lord Kerr) also went on to hold: (1) considerations of public policy, which militate in favour of applying the illegality defence, scarcely existed on the facts of Miss Hounga's case; whereas (2) in circumstances amounting to human trafficking, or something very close to it, it would be inconsistent with public policy if the defence were upheld to defeat her claim. Further observing that the Council of Europe Convention on Action against Trafficking in Human Beings provided for the right of victims to compensation from perpetrators, Lord Wilson considered it would be "*too technical an approach to an international instrument to contend that … relates to compensation only for the trafficking and not for related acts of discrimination*", concluding "*it would be a breach of the UK's international obligations under the Convention for its law to cause Miss Hounga's complaint to be defeated by the defence of illegality*".

11. The Supreme Court's decision in *Hounga* was heralded as one of the most important employment law cases determined by the UK Supreme Court, and the majority's analysis was described by one commentator as acting as a "*Trojan horse", "[bringing] international human rights law into the very breast of the*

English common law"[2]. Whether you choose to go that far, *Hounga* is certainly a case in which the Supreme Court made clear that a legal defence founded on public policy considerations should not be able to defeat employment protections in circumstances where that would itself be contrary to public policy.

12. The Supreme Court in *Hounga* had been specifically concerned with the operation of the defence of illegality; the underlying finding of discrimination was not itself in issue at that stage. That, however, was the point put under the spotlight in the second decision I wish to consider – another ruling of the Supreme Court in the joined cases of *Onu v Akwiwu,* and *Taiwo v Oliagbe*[3].

13. The facts of these cases have a number of similarities with each other and with Miss Hounga's case; they are set out in the judgment of Lady Hale, with whom the other members of the Court agreed.

14. Like Miss Hounga, Ms Onu and Ms Taiwo are both Nigerian. Both entered the UK on migrant domestic workers' visas, obtained by their respective employers, who had given false information to the UK authorities. Both had their passports taken from them by their employers once they entered the UK; neither was given a written statement of terms and conditions, nor received the minimum wage, nor the rest periods or annual leave required by the Working Time Regulations. Ms Onu was required to work an average of 84 hours a week, looking after the home

[2] Prof Alan Bogg, "*Hounga v Allen: Trojan Horse Comes to the Rescue of 'Illegal' Migrants*" Oxford Human Rights Hub, Sep 17, 2014.
[3] [2016] UKSC 31

and the couple's two children, one of whom required special care; and she was threatened and abused, and told she would be arrested and imprisoned if she tried to run away. Ms Taiwo was similarly expected to be "on duty", during most of her waking hours, was forced to return most of her pay to her employers; had to share a room with the employers' children, was not given enough to eat, and was subjected to both physical and mental abuse, including being slapped and spat at, mocked for her tribal scars and poverty, and called a "*crazy woman*"; the EAT described her situation as "*systematic and callous exploitation*".

15. After nearly two years, Ms Onu fled, walking eight miles to the home of a Jehovah's Witness she had met on the doorstep, and was then put in touch with a charity which assists trafficked migrant workers. In Ms Taiwo's case, a sympathetic worker at the children's playgroup put her in touch with social services and other agencies, which enabled her to escape and supported her thereafter.

16. Both Ms Onu and Ms Taiwo pursued claims before the employment tribunal. In both cases, their claims for unpaid wages, failure to provide rest periods, and failure to provide a written statement of terms of employment were upheld. In Ms Onu's case, it was also found she had been constructively and unfairly dismissed, and that her employers had directly discriminated against her and had harassed her on grounds of race. In contrast, the tribunal in Ms Taiwo's case dismissed her discrimination claims, finding her treatment was because she was a vulnerable migrant worker, not because of her race.

17. Both cases went to the EAT: in Ms Onu's case, the employers succeeded in overturning the finding of discrimination; on Ms Taiwo's appeal, the finding on that point was upheld. The outcome was the same before the Court of Appeal.

18. The cases thus arrived at the Supreme Court. Observing that the mistreatment of migrant domestic workers by employers who exploited their vulnerable situation was clearly wrong, Lady Hale pointed to the various legal routes that might provide protection against such abuse. As well as potentially giving rise to a breach of contract or other employment rights, she noted that this might be an offence under sections 1 or 2 of the Modern Slavery Act 2015, and that, on conviction of such an offence, the court could make a slavery and trafficking reparation order under section 8, requiring that the victim be paid compensation for any harm resulting from the offence. Lady Hale went on to observe, however, that

> "... such orders can only be made after a conviction and confiscation order; and remedies under the law of contract or tort do not provide compensation for the humiliation, fear and severe distress which such mistreatment can cause."

19. Such a remedy could, however, arise if the employer's conduct was held to amount to race discrimination under the Equality Act 2010 – which allows for awards to be made for non-pecuniary losses – and that, Lady Hale went on to point out, would be a claim that could be brought in an employment tribunal, at the same time as proceedings for unpaid wages and other breaches of the contract of employment, and for unfair dismissal. Noting that the definition of "*race*" covered nationality and ethnic or national origins, the questions for the

Court were: (1) whether a finding of mistreatment because of vulnerable immigration status amounted to discrimination because of nationality? and (2) whether the employers' conduct amounted to indirect discrimination against persons who shared that nationality?

20. The Court answered both questions in the negative. As claims of direct race discrimination, the difficulty was that immigration status was distinct and distinguishable from race. Although immigrants reliant on employers for visas may be vulnerable, not all immigrants from the same nation would be in the same position; equally, it was unlikely that British nationals of the same ethnicity or race to the claimants would be treated comparably. The discrimination was based on immigration, rather than race.

21. As for indirect discrimination, that would require the identification of a provision, criterion, or practice ("PCP") that disadvantaged people of the claimant's nationality. Here the only PCP identified was the mistreatment and exploitation of workers who were vulnerable because of their immigration status, but that, by definition, would not be applied to workers who are not so vulnerable, and the application of such a PCP to Ms Onu and Ms Taiwo could not, therefore, be indirect discrimination.

22. The Supreme Court decision in *Onu* and Taiwo confirms that which is constitutionally clear: the extension of legislative protections is a matter for

Parliament, not the courts. The issues raised in those cases also demonstrate why such matters must be for the law-makers; as Lady Hale observed:

> "22. Parliament could have chosen to include immigration status in the list of protected characteristics, but it did not do so. There may or may not be good reasons for this - certainly, Parliament would have had to provide specific defences to such claims, to cater for the fact that many people coming here with limited leave to remain, or entering or remaining here without any such leave at all, are not allowed to work and may be denied access to certain public services. ..."

23. Rather than trying to shoehorn migrant worker protections into the Equality Act, the Supreme Court noted that an alternative might be to broaden the remedy provided by section 8 of the Modern Slavery Act, to give employment tribunals jurisdiction to grant some recompense for the ill-treatment meted out to workers such as Ms Onu and Ms Taiwo; but that, the Court was clear, was a matter for Parliament.

24. The decision of the Supreme Court in *Onu* and *Taiwo* was followed by the Court of Appeal in the third case I want to consider, that of *Mruke v Khan*[4].

25. Ms Mruke was born in Tanzania, and was uneducated and illiterate. She had been working in a hospital in Tanzania, which was run by Mrs Khan, although Mrs Khan largely lived in the UK with her two children, who both had disabilities. In 2006 Mrs Khan brought Ms Mruke to the UK to undertake domestic work at her – Mrs Khan's – house, and to help care for her children.

[4] [2018] EWCA Civ 280

26. In 2010, Ms Mruke managed to leave and subsequently brought employment tribunal proceedings, claiming direct race discrimination and constructive unfair dismissal, relying on a failure to pay the national minimum wage. Agreeing that Mrs Khan had failed to pay the national minimum wage (Ms Mruke's pay worked out at around 33p an hour), and had failed to provide annual leave, itemised pay statements, weekly rest breaks or an adequate living space, the tribunal nevertheless rejected the claims of race discrimination and unfair dismissal. Accepting that Ms Mruke was employed because she was from Tanzania, the tribunal found that did not explain the reason for her treatment, which was due to the lower living wage in Tanzania. As for the unfair dismissal claim, while it allowed that the failure to pay the national minimum wage was a fundamental breach of contract, the tribunal found there was no evidence that this was why Ms Mruke resigned as she had not given this as a reason for leaving and had not said she had been aware of her entitlement to the national minimum wage.

27. Ms Mruke appealed. She was unsuccessful before the EAT but pursued her case to the Court of Appeal. Her appeal in respect of the claims of race discrimination was dismissed, for the same reasons as those given by the Supreme Court in *Onu* and *Taiwo*, but she succeeded in respect of her claim of constructive unfair dismissal. In this regard, Singh LJ (with whom the other members of the Court agreed) noted that the National Minimum Wage Act implied a term into a contract of employment that the national minimum wage was to be paid. Further observing that the purpose of this social legislation was to protect workers, including

employees such as Ms Mruke, who – as Parliament would have been well aware – may be susceptible to exploitation, Singh LJ held it was an error of law "*to rely upon that person's ignorance of her rights … as meaning that she could not be considered to have resigned in response to what was otherwise found to be a fundamental and repudiatory breach of contract by her employer…"*

28. In reaching this conclusion, the Court considered there could be occasions where a contract was so egregiously performed that it was obvious that the employee had resigned in response to the employer's repudiatory breach, notwithstanding a lack of express reasons. This, it held, was such a case, and Ms Mruke's vulnerabilities were not to be used as a barrier to her ability to claim unfair dismissal.

29. And that then brings me to the fourth, and final, judgment that I want to consider this evening, the decision of the Supreme Court in *Basfar v Wong*[5]*,* which concerned a claim of diplomatic immunity.

30. Ms Wong (a Philippines national) was employed by Mr Basfar, a member of Saudi Arabia's diplomatic staff in the UK, who had brought Ms Wong from Saudi Arabia to work in his household here. It was Ms Wong's case that, from her arrival in the UK, she was required to work from 7 am to 11:30 pm daily (with no days off or rest breaks), and was on call 24/7; that she was not paid for seven months, and was

[5] [2022] UKSC 20

then paid a lump sum of around £1,800; and that she had been confined to the house (except to take out the rubbish), held virtually incommunicado (she was allowed to speak to her family twice a year, using Mr Basfar's phone), and was frequently shouted at and verbally abused.

31. After nearly two years, Ms Wong managed to leave, and claimed she was a victim of human trafficking who had been exploited by Mr Basfar by being forced to work in circumstances of modern slavery. When she sought to bring a claim against him in the employment tribunal, for wages and breaches of her employment rights, however, Mr Basfar applied to have Ms Wong's case struck out on the ground of diplomatic immunity under article 31 of the Diplomatic Convention. Article 31 provides that a diplomatic agent shall enjoy immunity from the civil jurisdiction of the receiving state save in respect of any action relating to any professional or commercial activity exercised by the agent in the receiving state outside his official functions.

32. The Supreme Court noted there was evidence that exploitation of migrant domestic workers by foreign diplomats is a significant problem, such that the question raised in Ms Wong's case was one of general importance. For the purpose of the appeal – in order to test Mr Basfar's argument – the Supreme Court proceeded on the basis that Ms Wong's allegations had been made out, and that this was a case of a domestic worker who had been trafficked and exploited, as a victim of modern slavery.

33. Acknowledging that ordinarily the employment of a domestic worker by a diplomatic agent would be incidental to daily life, and thus *not* a "*commercial activity*", the majority of the Court (Lord Stephens agreeing with the judgment jointly written by Lord Briggs and Lord Leggatt) did not accept that exploiting a domestic worker, by compelling her to work in circumstances of modern slavery, was comparable to an employment relationship. Employment, the majority observed, is a voluntary relationship, freely entered into, and governed by the terms of a contract, and, subject to contractual notice provisions, employees are free to leave and cannot be compelled to stay by injunction, even if they leave in breach of contract. By contrast, the essence of modern slavery is that it is not freely undertaken; work is extracted by coercion and the exercise of control, usually exploiting circumstances which make the victim especially vulnerable to abuse, and involving constraints that make it very difficult for her to leave.

34. More than that, however, the majority considered that this was a case in which (on the assumed facts) Mr Basfar had made a substantial financial gain from his exploitation of Ms Wong's labour. Although the gain was in money's worth rather than cash, the exploitation of Ms Wong was a systematic activity carried on over a significant period, and was accurately to be described as a commercial activity practised for personal profit. Noting that the rationale for excluding a contract for ordinary domestic services from the phrase "*commercial activity*" reflected the need to protect diplomats and their families from hindrance in going about their daily lives in the receiving state, the majority considered it would be:

> "57. … not merely wrong but offensive to suggest that conduct of the kind disclosed by the assumed facts of this case is incidental to daily life, let alone the daily life of an accredited diplomat. … such exploitation is an abuse of the diplomat's presence in the receiving state and falls far outside the sphere of ordinary contracts incidental to the daily life of the diplomat and family members which the immunity serves to protect."

35. As such, the majority held that Mr Basfar could not rely on diplomatic immunity to avoid Ms Wong's claims.

36. It is worth noting that the minority (Lord Hamblen and Lady Rose) did not feel able to agree with this approach, concluding that a transaction – here the employment of Ms Wong – could not amount to a commercial activity when it was not itself part of, or incidental to, some overall professional or commercial activity. They further expressed the concern that an expansion of the exception might risk undermining the scope of diplomatic immunity, given the intrusive nature of the enquiry that a tribunal would have to conduct, and might also expose UK diplomats to formal or informal retaliatory measures. Even if such a claim were allowed, however, the minority pointed out that a money judgment against a diplomat would be difficult, if not impossible, to enforce.

37. So, having thus considered four cases in which the courts have had to approach potential questions of modern slavery in the employment law context, what, if any, conclusions should we draw?

38. A general point that can be made is that the courts have shown themselves alive to the need to ensure the efficacy of employment protections enacted by

Parliament. Thus, as I have already observed, the decision in *Hounga* can be seen to make clear that the courts will not allow a legal defence founded on public policy considerations to defeat an attempt to enforce statutory employment protections where that would itself be contrary to public policy. A similar approach might be said to have informed the decision in *Mruke*: where an exploited migrant worker is – due to her particular vulnerabilities – unable to clearly articulate a necessary feature of her claim (i.e. that the failure to pay the national minimum wage was a material reason for her to leave her employment) that need not be fatal where the relevant abuse of her rights was in fact an obvious and egregious breach of a statutory right. And, equally, similar concerns can be seen to have underpinned the decision of the majority in *Basfar*, notwithstanding the particular complexities that arise in cases involving claims of diplomatic immunity (described as a setting a "'*tightrope' of principle and policy*" for domestic courts[6]) and the problem of enforcement that would remain even with such a broadening of the exception to immunity.

39. What is also clear, however, is that the courts will not – and should not – create new protections to address the particular issues that can arise in cases involving vulnerable migrant workers; that is, and must be, the task of Parliament. And, in this regard, as was made clear in *Onu* and *Taiwo*, the Equality Act does not provide a "*one size fits all*" answer that can simply be taken off the shelf to address the issues raised. Other labour law rights will, however, provide important

[6] *Modern Slavery and the Commercial Activity Exception to Diplomatic Immunity from Civil Jurisdiction: the Supreme Cout's Decision in Basfar v Wong* Sophie Ryan MLR 2004 202-217

protections for those migrant workers who face exploitation in the workplace, particularly with the extension of coverage heralded by the Employment Rights Act 2025, which will bring many more vulnerable workers into the scope of statutory employment protections.

40. Also of potential significance is the recent establishment of the Fair Work Agency, responsible for enforcing a wide range of labour market legislation and protecting workers from exploitation, non-compliance and abuse. In this regard, it is notable that, in each of the cases I have referenced, various state agencies, charities and NGOs played an important role in providing support for the claimants, both to leave the situations in which they were in, and to then identify potential causes of action and access to the means by which their rights might be enforced.

41. It is a question of policy as to how best to protect against forced labour and human trafficking. If, however, the decision is taken that this should be through existing civil law protections and remedies, a separate – but no less important – question arises as to how those such protections are to be ensured for the most vulnerable victims of labour exploitation. As Lord Reed observed in the *Unison* case[7], without access to justice, laws are liable to become a dead letter. While law reform must be for the policy-makers, there is an obvious need to ensure adequate mechanisms to enforce legal rights and protections if these are not to be reduced.

[7] *R (oao Unison) v Lord Chancellor* [2017] UKSC 51