

# FRAUD & WHITE COLLAR CRIME 2016

## EXPERT GUIDE

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**KEYSTONE LAW**

**Conspiracy to Defraud and Human Trafficking**

*By Mark Spragg*

Many people are aware of the offences of Human Trafficking involving serious exploitation of workers brought from outside the UK to work as slaves for Gangmasters and others, sometimes in private homes. These people were promised a new life in a country known for its democracy and Human Rights who are held against their will because their passports are confiscated and exploited by being required to work as slaves to “repay” their transport and living costs. The debt is never repaid and the “lucky” ones manage to escape.

But this only affects the poorer people in third world countries doesn't it? Those struggling to escape from poverty and hopelessness? Those wanting to build better lives who are tricked into slavery?

The answer to all of the above is no. It is happening increasingly to sophisticated businessmen who are caught up in alleged civil disputes centred in the Middle East where the criminal law, harsh prison conditions and language barriers combine to force them to settle civil disputes even before they are begun. In fact, the dispute may be the other way around with the businessman being forced to give up his claims and pay large settlements to his traffickers.

The opponents will do the following:

- Deceive Mr X into leaving the UK for the ostensible purpose of attending a business meeting in, say, the UAE.
- Advance a civil claim against him.
- Threaten him with adverse consequences if he fails to settle.
- Advance a false claim of fraud within the civil claim.
- Advance false criminal complaints to law enforcement authorities in the UAE.
- Procure indefinite imprisonment without charge.
- Apply for worldwide freezing orders over all assets.
- Effectively blackmail Mr X into settling the false civil claims.

In the above scenario, Mr X may go through some sort of trial but he will usually have no access to documents or witnesses and all proceedings will be in Arabic. The British Authorities are not renowned for helping very much and Mr X may end up in prison for a lengthy spell. Even before the so called trial he will have experienced torture and brutality at the hands of his guards. The use of a taser is well known and medication is unlikely to be allowed. Un-



surprisingly, Mr X will be sufficiently “softened up” to be amenable to settling whatever civil action is presented against him.

Short of a “trial” and prison, Mr X may be subjected to a travel ban effectively the equivalent of having his passport physically removed from him and leaving him with no resources in a foreign country with no welfare system. He might well then agree to settle the false civil claims.

The obvious manipulation of a foreign State and the false representations made to Mr X may

well amount to an offence of Conspiracy to Defraud under the Criminal Law Act 1977. Unless the true object of the conspiracy is to defraud a person abroad, and damage to the person in the United Kingdom is entirely incidental, a conspiracy to defraud a person in the United Kingdom, even if wholly performed abroad, is indictable in England and Wales. A conspiracy is where two or more people agree, dishonestly, to cause prejudice or risk to the economic or financial rights of another. To threaten a person in order to win a civil case is to prejudice, dishonestly, a person's economic rights.



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We are all familiar with the offence of Trafficking under the Immigration & Asylum (Treatment of Claimants) Act 2004. It is wider than might appear because someone who arranges or facilitates the departure from the UK of an individual intending to exploit the person outside the UK or believing another person is likely to exploit that person outside the UK may be guilty of the offence of trafficking. Exploitation means subjecting a person to force, threats or deception designed to induce him to provide benefits to another. The penalty is a term of imprisonment of up to 14 years.

Mr X’s opponents may also be guilty of the offence of Conspiracy to Traffic for exploitation. This may be shown by:

- Encouraging Mr X to travel
- Arranging his visa
- Buying his air ticket

This is completed with the objective of forcing his arrest and detention, making false representations and the continued threat of loss of liberty. Where the conduct is designed to benefit the Claimant in the civil proceedings the offence is complete.

Encouraging and achieving the removal and detention of Mr X is a powerful tool in international battles. There is no “equality of arms” and no fair trial. The criminal law is used to achieve a benefit and by physically removing the defendant and freezing all his assets it makes a proper defence very difficult indeed. Foreign States which make fewer enquiries than they should are being used. But English law can provide a powerful answer and by physically removing the defendant and freezing all his assets it makes a proper defence very difficult indeed.

*Mark Spragg is both a civil and criminal litigation specialist who conducts the majority of his work in the area of Financial Services, often against the State, in particular HMRC, the Serious Fraud Office and the Financial Conduct Authority. Many of his cases conclude in the Supreme Court and the European Court of Human Rights and involve real points of principle.*

*Mark has been involved in many notable and interesting cases since the establishment of the SFO and he is often called upon by the media to offer comment on matters of national interest.*

