



Ben Douglas-Jones QC

Year of Call: 1998 | QC: 2018

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Overview

Ben Douglas-Jones QC is a specialist fraud, criminal and regulatory barrister.

He is highly recommended in Chambers and Partners. The Legal 500 for Criminal Fraud and Consumer Law, describes him as “extremely bright”, with “great intellectual strength” and “extremely able” with the ability to “marshal cases of the utmost complexity”.

Practice Areas

Criminal

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Ben defends professional and corporate clients including public limited companies.

Ben prosecutes for the Specialist Fraud Division, Organised Crime Division, Appeals and Review Unit, Proceeds of Crime Unit and Welfare, Rural and Health Division (including the Medicines and Healthcare products Regulatory Agency) of CPS Headquarters. He also prosecutes for local authorities.

He practises in all serious and complex fraud, including corporate, financial, banking, mortgage, Excise, Hawala, advance fee (419), boiler room, MTIC, NHS, dental, pharmaceutical, Internet, car-ringing, gambling, banking, cheque clearing cycle and insurance fraud.

Ben is a member of the Fraud Advisory Panel and the Fraud Lawyers’ Association.

Ben’s regulatory practice extends to all areas of consumer law, with an emphasis on trade-marks and copyright law, criminal planning, food safety and environmental health.

Ben’s human rights and appellate practice has seen him appear in many leading and reported cases. Recent appeals include:

R v VSJ and others [2017] EWCA Crim 36; [2017] 1 W.L.R. 3153; [2017] 1 Cr. App. R. 33; [2017] Crim. L.R. 817 (Special Court – serious offences committed by human trafficking victims; duress in relation to trafficking victims);

R v Mumtaz [2017] EWCA Crim 1843 (serious and complex fraud);

R v Robinson [2017] EWCA Crim 936 (double jeopardy);

R v PK [2017] EWCA Crim 486 (leave to appeal out of time);
R v Miharessari [2016] EWCA Crim 1733 (asylum seekers breaching Channel Tunnel security);
R v M [2016] 4 W.L.R. 146 [2016] 2 Cr. App. R. 20 (doli incapax);
R v Boateng [2016] EWCA Crim 57; [2016] 4 W.L.R. 70; [2016] 2 Cr. App. R. 5; [2016] Crim. L.R. 495 (complex immigration fraud);
R v YY [2016] EWCA Crim 18; [2016] 1 Cr. App. R. 28 (role of the CCRC in appeals concerning refugees);
R (Ewing) v Cardiff Crown Court [2016] EWHC 183 (Admin); [2016] 4 W.L.R. 21; [2016] 1 Cr. App. R. 32; (2016) 180 J.P. 153; [2016] E.M.L.R. 18; [2016] Inquest L.R. 32; [2016] A.C.D. 44 Contempt of court; Live text-based communications; Notes; Permission; Refusal; Vexatious litigants);
Serious Fraud Office v Evans (the Celtic Energy fraud) [2015] EWHC 263 (QB); [2015] 1 W.L.R. 3595; [2015] Lloyd's Rep. F.C. 223;
Serious Fraud Office v O'Brien (Supreme Court) [2014] UKSC 23; [2014] A.C. 1246; [2014] 2 W.L.R. 902; [2014] 2 All E.R. 798; [2014] Lloyd's Rep. F.C. 401; Times, April 11, 2014 (Contempt of court; Extradition offences; Restraint orders; Speciality)
R v Mateta and others [2013] EWCA Crim 1372 (Special Court – asylum defences);
R v L and others [2013] 2 Cr. App. R. 23 (Special Court – human trafficking);
R (on the Application of A) v Lowestoft Magistrates' Court [2013] E.M.L.R. 20; [2013] A.C.D. 72 (freedom of speech).

Ben is an editor of Southwell, Brewer and Douglas-Jones – Human Trafficking and Modern Slavery Law in Practice. the 1st edition published by Bloomsbury professional in February 2018.

Ben is an author of the Blackstone's Guide to the Consumer rights Act 2015.

Ben has co-written the 2018 CPS Guidance on charging and prosecuting victims of human trafficking He is one of the authorities of the current guidance (see Publications).

Ben prosecutes and defends in serious criminal cases, including murder, sexual and drug offences.

He has vast experience in restraint, confiscation and receivership proceedings.

Ben conducts second-opinion defence appellate work where he did not appear in the Crown Court and is instructed by the CPS Appeals and Review Unit in the High Court and Court of Appeal.

He also has significant expertise in miscarriage of justice work having represented Colin Stagg and secured his £706,000 compensation for Stagg's wrongful indictment for the murder of Rachel Nickell.

Ben is also an attorney-at-law in Grenada, with rights of audience in the Eastern Caribbean Court of Appeal.

Ben is a qualified advocacy trainer for Gray's Inn.

Notable Cases

Ben Douglas-Jones QC appeared for the Crown in **R v Kolesnikova** (CACD 18-12-18; Gross LJ; Cutts J and HHJ Lucraft QC) the Court held that:

- (1) where victims of human trafficking commit serious offences, not only is the decision as to whether or not to prosecute fact-specific, but also a high level of compulsion is needed to extinguish culpability to inform a decision not to prosecute;
- (2) the nexus of compulsion is a significant factor where the defendant has an opportunity to extricate herself from the offence;
- (3) with expert trafficking evidence, where such evidence is generalised "country" evidence which could have been called in the Crown Court, it is generic evidence which should not be admitted in support of an appeal;
- (4) a diagnosis of trauma induced "freeze response" brought about by traffickers' control of the defendant as a victim did not form the basis for allowing an appeal.

Ben Douglas-Jones QC also appeared for the Crown in **R v HHD** (Court of Appeal: Gross LJ; Cutts J and His Honour Judge Lucraft QC (sitting as a Judge of the CACD) the court endorsed 4 issues to be highlighted in cases where victims of human trafficking (VOTs) and slavery are charged with criminal offences. The case was referred to the Senior Presiding Judge because of its importance:

- (1) The latest version of CPS Guidance November 2018 includes a 4-stage test, which requires prosecutors to consider s.45, Modern

Slavery Act 2015 at the evidential stage of the Full Code Test. If there is insufficient evidence, having considered it, prosecutors should not charge or should discontinue on evidential grounds. The CPS Guidance [re public interest] applies to all cases where statutory defence is not available.

(2) It is not necessary for there to be movement when someone is a VOT: practitioners should consider the definition of trafficking in Art 2 of Directive 2011/36/EU..

(3) It is important that VOTs are identified as such before Court proceedings if possible. CPS guidance requires that a request be made that a plea is not formally entered where indicators are present. All should be alive to indicators published by the United Nations Office on Drugs and Crime Human Trafficking and United Nations Global Initiative to Fight Trafficking. Should the issue be raised at 1st hearing judge should consider whether there is credible evidence of trafficking. If so he should adjourn for the NRM procedure to be followed. It should take 45 days [between RG and CG decision]. In practice it may take longer. In such cases Better Case Management will not apply and stage dates will need to be amended. Courts will need to be astute to avoid unmeritorious assertions that the a defendant is a VOT. This Judgment will be sent to the Senior Presiding Judge.

(4) All concerned should be alive to trafficking in a number of situations, such as debt bondage.

BDJQC is prosecuting David Osborne, Ieuan Harley and Darran Evesham for the vigilante murder of David Gaut. Media coverage of this case can be found [here](#) and [here](#).

MK v R; Gega v R [2018] EWCA Crim 667

Ben Douglas-Jones QC appeared for the Crown in this crucially important case which has resolved the burden of proof where a defence is raised under s45 Modern Slavery Act 2015.

R v Edwards [2018] EWCA Crim 595

Ben Douglas-Jones QC appeared for the Crown in this case in which the Vice President of the Court of Appeal handed down definitive guidance on the approach to sentencing defendants with mental illnesses.

R. v D [2016] EWCA Crim 454; [2016] 4 W.L.R. 122; [2016] 2 Cr. App. R. 18; [2016] Crim. L.R. 569

Ben appeared in an important appeal concerning defective indictments and the substitution of offences on appeal.

R. v M [2016] 2 Cr. App. R. 20

Ben appeared in an appeal concerning the presumption of incapacity of committing a crime in historical offences where *doli incapax* applied. The presumption could only be rebutted by the prosecution by clear positive evidence, not consisting merely of evidence of the acts amounting to the offence itself, but that the appellant knew that his act was seriously wrong as distinct from mere naughtiness or childish mischief. Where such incidents formed bad character evidence then the presumption was irrelevant.

R. (on the application of Purvis) v DPP [2018] 2 Cr. App. R. 34

For the purposes of a right of appeal, a High Court decision on an application for judicial review of a prosecutor's decision whether to prosecute a person was a decision in a criminal cause or matter. A decision of the Court of Appeal Civil Division which should arguably have been made by the Supreme Court stood unless declared void.

R v GS [2018] EWCA Crim 1824

The change in law concerning the non-prosecution and non-punishment of human trafficking victims from 2007 to 2018 renders an application for leave to appeal against a 2007 conviction a change in law case and therefore the substantial injustice test applies.

Drug mules commit serious offences. Notwithstanding evidence of duress involving threats of serious injury or death to GS and her young son, if she refused to smuggle drugs, she had not been under such a level of compulsion that her criminality or culpability was reduced to such an extent that it was not in the public interest for her to be prosecuted. It had not been an abuse of process to prosecute GS.

R v Biglary-Ghalilou (24 October 2018; Gross LJ; Spencer J and HHJ Katz QC)

Under s.31 of the Immigration and Asylum Act 1999 (which creates defences based on Article 31(1) of the Refugee Convention) where the Secretary of State has refused to grant a claim for asylum made by a person who claims that he has a defence under s.31, that person is to be taken not to be a refugee unless he shows that he is (i.e. the legal burden of proof shifts from the Prosecution to the Defence). Where a defendant is later granted asylum on the basis of sur place grounds (i.e. grounds which arose after the date of the offence, when s/he was in the UK), the burden of proof still lies with the defendant and not the prosecution.

R v Valiati and KM (1 November 2018; Sir Brian Leveson PQBD and McGowan J)

The Court emphasised that it is mandatory for "Immediately prior to the commencement of a trial, the legal adviser must summarise for the court the agreed and disputed issues, together with the way in which the parties propose to present their cases. If this is done by way of pre-court briefing, it should be confirmed in court or agreed with the parties."

Where the contents of the PET form (in particular, section 8 of the form (issues, as opposed to section 9, agreed facts)) become relevant to an issue in the case:

"If circumstances arise in which it is sought to argue that the information provided on a PET form should have evidential significance, an appropriate application must be made and the hurdles both in relation to hearsay and s. 78 of PACE satisfied."

I.e. it may be appropriate to apply to adduce the admission of an agent acting on behalf of a defendant as hearsay under the sixth rule preserved by s. 118(1) of the Criminal Justice Act 2003.

Memberships

Fraud Lawyers' Association

Criminal Bar Association

South Eastern Circuit

American Conference Institute ACI Anti-Corruption / FCPA: Legal, Regulatory and Compliance Experts

AMLAC – Anti-Money Laundering, Audit, Compliance and Fraud Forum

Caribbean Lawyer Network

Anti Counterfeiting Professionals

FCPA – Foreign Corrupt Practices Act – Anti-Corruption Compliance Group

Financial Crime Risk, Fraud and Security

Proceeds of Crime network

Professional Discipline Lawyers Group

Regulatory Compliance Association

The Annex

Recommendations

Legal 500 2018: 'He has a fabulous acumen for seeing the point and exposing deficiencies in the other side's case.'

Legal 500-2018: 'Known for his work in Consumer Rights Act cases.'

Chambers and Partners 2018: "A great barrister – he is bright and diligent." "Ben is exceptionally good at his written work."

Chambers and Partners 2018: "Articulate, measured and someone whose drafting skills are good." "His work rate is simply phenomenal. Lots of people work hard, but he works both hard and extremely productively. With him, work is always flawless."

Publications

2018: Human Trafficking and Modern Slavery: Law and Practice

2015: Blackstone's Guide to the Consumer Rights Act 2015

2015: Conspiring to define conspiracy to defraud; 2015 Article published in The Lawyer concerning the recent changes in the law with regard to conspiracy to defraud

2013: the CPS Guidance on charging and prosecuting victims of human trafficking – co-written with Carolyn Oakley, Specialist Prosecutor and Pam Bowen CBE, the CPS Policy Lead on Human Trafficking.

2009: Unsilent Witness (Commercial Litigation Journal 2009, with James Stanbury, partner in RGL Forensics' London office), examining the factors which typically need to be considered when instructing a forensic accountant. 2008