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# Fraud by Abuse of Position and Unlicensed Gangmasters

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**Keywords:** Fraud; Fraud by abuse of position; Defendants acting as unlicensed gangmasters; Whether case to answer; exploitation

**Legislation:** Gangmasters (Licensing) Act 2004, ss 4, 12; Fraud Act 2006 ss 1, 4.

**Cases:** R v Valujevs and another [2014] EWCA Crim 2888; [2015] 3 WLR 109

**Abstract:** This article analyses the Court of Appeal's interpretation of the fraud by abuse of position offence in *R v Valujevs*. Two issues are explored: first, the Court's welcome clarification of the meaning of a relevant 'expectation'; second, the inadequacy of the Court's reasoning in deciding that an unlicensed gangmaster 'is expected to safeguard, or not to act against, the financial interests' of his workers.

Criminal lawyers have long expressed concern about the nebulous scope of the fraud offence found in section 1 of the Fraud Act 2006.<sup>1</sup> The offence is

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<sup>1</sup> See D. Ormerod, 'The Fraud Act 2006 - Criminalising Lying?' [2007] Crim LR 193. For background, see Law Commission Consultation Paper No 155, *Legislating the Criminal Code: Fraud and Deception* (1999); Law Commission No 276, *Fraud* (2002); Home Office Consultation Paper, *Fraud Law Reform* (2004).

drafted in inchoate form, penalising three types of dishonest conduct: false representations, failures to disclose information, and abuses of positions of trust. It must be shown that a defendant dishonestly engaged in one of these forms of conduct, and that he intended, by means of it, to either make a gain for himself or another, or to cause loss or the risk of loss to another. To date fraud by false representation has been most commonly charged.<sup>2</sup> But clarification of the scope of fraud by abuse of position is long overdue, given its astonishing breadth and its perceived role by criminal law commentators as a means of penalising exploitation.<sup>3</sup> *R v Valujevs* provided the Court of Appeal opportunity to consider both of these issues within the specific context of a regulatory scheme applied to gangmasters.

The defendants, Mr Valujevs and Mr Mezals, worked as unlicensed gangmasters in Cambridgeshire. They supplied agricultural work, transport and accommodation to individuals who had come to the UK from Latvia and Lithuania. The defendants sought to ensure that the workers were highly dependent upon them, with the aims of securing for themselves financial bargaining power and opportunity to gain. The strategy to achieve these aims was to create situations where workers were in debt to them. It was alleged that the defendants required workers to take up their offer of accommodation

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<sup>2</sup> Ministry of Justice, *Post-legislative Assessment of the Fraud Act 2006: Memorandum to the Justice Select Committee* (London 2012) para 13.

<sup>3</sup> See, for instance, A.P. Simester and others, *Simester and Sullivan's Criminal Law: Theory and Doctrine* (Hart, 2010) 618-619; R. Williams, 'Cartels in the Criminal Law Landscape' in C. Beaton-Wells and A. Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement* (Hart, 2011) 300-301.

as a condition for obtaining work, thus tying the worker to the defendants. 'Grossly excessive' rent was then charged. Unable to keep up with inflated rent payments, many workers defaulted. The defendants withheld work until a worker was in significant debt. Then, once work was provided, wages earned were withheld or subject to deductions and penalties by the defendants in order to recoup for a worker's financial indebtedness. Against this backdrop of 'debt bondage', evidence was presented at trial that both Mr Valujevs and Mr Mezals had physically threatened several of their workers.

At first instance, there was no dispute that the defendants could be charged with acting as unlicensed gangmasters, contrary to section 12(1) of the Gangmasters Licensing Act 2004, and for conspiracy to facilitate the commission of breaches of immigration law. Two key issues were considered by the Court of Appeal. The first was to reexamine Richardson J.'s emphatic rejection of a case to answer in relation to fraud by abuse of position. Was the position of unlicensed gangmaster one in which an individual 'is expected to safeguard, or not to act against, the financial interests' of his workers, as required by section 4(1)(a) of the Fraud Act? The second issue was to clarify the meaning of 'expectation' in relation to fraud by abuse of position.

Let us first deal with the Court of Appeal's treatment of the 'expectation' issue. From whose vantage point is an expectation that an individual will safeguard, or will not act against, another person's financial interests to be judged? The defendant, the potential victim, or the reasonable person? *Valujevs* confirms that the judge and jury must decide whether a reasonable person would hold

such an expectation.<sup>4</sup> An objective interpretation is the principled approach. An individual ought not to be entitled to claim that another is responsible for safeguarding his financial interests, or is responsible for not acting against them, if the reasonable person would disagree. Nor should a defendant be able to shirk responsibility if the reasonable person would say he has it. But this discussion only serves to highlight unabated concerns about legal certainty and fraud by abuse of position. It is first for the judge to decide whether a reasonable person would say that an individual has an expectation 'to safeguard or not to act against' the financial interests of another person. Can judges hope to produce consistency on this key issue? On the facts of *Valujevs* we see just how ad hoc this judicial assessment can be. The problem of uncertainty is even more pronounced in the fraud by abuse of position offence: a defendant must be found to be dishonest (itself an obscure concept), and the *Ghosh* direction hardly produces consistency on this key issue.<sup>5</sup>

Secondly, the Court of Appeal's judgment focused on whether there was a case to answer in relation to fraud by abuse of position. The trial judge had held that fraud by abuse of position was 'not remotely arguable' on the basis of respect for commercial freedom.<sup>6</sup> In Richardson J.'s words: 'Providers of

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<sup>4</sup> [2015] 3 WLR 109 at [41].

<sup>5</sup> As required by Fraud Act 2006, s 4(1)(b). The *Ghosh* direction, *Ghosh* [1982] 1 QB 1053, has been influential in the interpretation of dishonesty in the section 1 fraud offence. This direction requires the following assessment: was the defendant's conduct dishonest according to the ordinary standards of reasonable people; and did defendant know he was acting dishonestly according to these standards?

<sup>6</sup> n 4 above at [19].

accommodation and transport are selling commodities on the open market. They are not expected to safeguard or not to act against the financial interests of those who may purchase their commodities.<sup>7</sup>

Nor did the Gangmasters Licensing Authority's Licensing Standards 2012, under which the defendants should have been registered, demand otherwise. While the 2012 Licensing Standards require that wages are consistent with labour law, for example, they do not require a reasonable or fair rent.<sup>8</sup> The safeguarding function assigned to a gangmaster was therefore considered by Richardson J. to be minimal. More promising was the line of argument that there was a fiduciary relationship because the defendants had accepted the wages of workers 'for the purpose of delivering them to the workers'.<sup>9</sup> A fiduciary relationship qualifies as a relevant position for the purposes of section 4(1)(a).<sup>10</sup> The defendants' deductions from the workers' wages would be a clear case of fraud by abuse of position if the defendants had acted with the required dishonesty.<sup>11</sup> While the possibility was not expressly rejected by the trial judge, it was displaced with a concern that the prosecution had not brought a charge of theft for the monies deducted.

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<sup>7</sup> *ibid.*

<sup>8</sup> On wage standards, see Gangmasters Licensing Authority, *Licensing Standards* (May 2012) 13 <<http://www.gla.gov.uk/PageFiles/956/Licensing%20Standards%20-%20May%202012.pdf>> accessed 23 September 2015.

<sup>9</sup> n 4 above at [24].

<sup>10</sup> Law Commission, *Fraud*, n 1 above, para 7.38

<sup>11</sup> See n 5 above.

On first blush this reasoning is surprising. Identifying whether there is a case to answer in relation to fraud by abuse of position is first for the judge to determine.<sup>12</sup> Inevitably judicial interpretation as to whether a person 'occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person' will vary. However, it is well-known that the Explanatory Notes to sections 1(2)(c) and 4 of the Fraud Act drew few limits to the range of possible positions of trust. The Notes simply restate the Law Commission's explanation of the meaning of 'position', found in its 2002 *Fraud* report.<sup>13</sup> A fiduciary duty is not necessary in order to determine that there is a relevant position; relationships 'between trustee and beneficiary, director and company, professional person and client, agent and principal, employee and employer, or between partners' will suffice.<sup>14</sup> A relevant position 'may arise otherwise, for example within a family, or in the context of voluntary work, or in any context where the parties are not at arm's length'.<sup>15</sup> Moreover, it is a duty to safeguard, *or not to act against*, another person's financial interests. All sorts of individuals may have a duty not to act against another person's financial interests. This suggests that fraud by abuse of position breaches rule of law ideals.<sup>16</sup> Clearly it is not acceptable to

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<sup>12</sup> n 1 above, para 7.38: whether there is a relevant position of trust will be 'an issue capable of being ruled upon by the judge and, if the case goes to the jury, of being the subject of directions'.

<sup>13</sup> *ibid* para 7.38

<sup>14</sup> *ibid*.

<sup>15</sup> *ibid*.

<sup>16</sup> According to the Joint Parliamentary Committee on Human Rights, *Legislative Scrutiny: Sixth Progress Report, Fourteenth Report of Session 2005-06* (The Stationery Office 2006) para 2.14, the section 1 fraud offence is compliant with Article 7 of the European Convention on Human Rights.

criminalise ‘something as innocuous as failing to work for an employer as hard as one might’ using section 4.<sup>17</sup> But where there is genuine scope for debate as to whether a defendant occupies a relevant position, and an element of dishonesty is present, it may be convincing for a judge to leave fraud by abuse of position to the jury for interrogation. Moreover, if a judge takes a broad approach to what might in principle count as a ‘position’, it follows that the jury gets to make more of the decision based on dishonesty.<sup>18</sup> There is a strong argument for this approach on the facts of *Valujevs*. The defendants in *Valujevs* ought to have been licensed; the relevant licensing regime required the provision of certain basic conditions for workers, including over workers’ financial interests; and the defendants and migrant workers were not at arm’s length.

The Court of Appeal overturned the trial judge. In the circumstances of this case, fraud by abuse of position *should* be left to the jury. Fulford L.J.’s conclusion was based on two factors. First, it was important that the defendants had assumed responsibility for paying the workers what they were due, and that they had exercised control over what monies the workers were paid. Where such responsibility and control is assumed, there is ‘a clear expectation that the worker will receive [wages] without a reduction in the form of (i) unwarranted financial penalties or deductions, (ii) unlawful demands for

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This is because dishonesty is embedded ‘as an element in the definition of the offence’, and there is ‘some identifiable morally dubious conduct to which the test of dishonesty may be applied’.

<sup>17</sup> D. Ormerod and D. Williams, *Smith’s Law of Theft* (OUP, 9th edn, 2007) 133.

<sup>18</sup> With thanks to my anonymous reviewer for this point.



the repayment of suggested fines, or (iii) artificially inflated rental payments'.<sup>19</sup> Secondly, even though the defendants operated as unlicensed gangmasters they *should* have been licensed (Gangmasters (Licensing) Act 2004, section 4). A gangmaster must adhere to the Gangmasters Licensing Standards 2012. These standards prohibit a gangmaster from withholding or threatening to withhold 'the whole or part of any payment due to a worker for any work they have done'.<sup>20</sup> The Court of Appeal stated that the standards set out in this document regarding the withholding of wages provided 'vital context'.<sup>21</sup> On this basis too fraud by abuse of position should be left to the jury.

However, the Court also affirmed Richardson J.'s concerns regarding commercial freedom. According to Fulford L.J., the facts that the defendants charged excessive rent, withheld work, or lent money to ensure debt bondage, did not contribute to a case that the defendants held an expectation under section 4 of the Fraud Act. The case for commercial freedom was tersely stated: 'Section 4 does not apply to those who simply supply accommodation, goods, services or labour, whether on favourable or unfavourable terms and whether or not they have a strong bargaining position'.<sup>22</sup> Individuals 'are entitled to and expected to look after their own

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<sup>19</sup> n 4 above at [38].

<sup>20</sup> Gangmasters Licensing Authority, *Licensing Standards* (May 2012) 15 <<http://www.gla.gov.uk/PageFiles/956/Licensing%20Standards%20-%20May%202012.pdf>> accessed 23 September 2015.

<sup>21</sup> n 4 above at [44].

<sup>22</sup> *ibid* at [43].

interests'.<sup>23</sup> One justification for this position was that gangmasters are 'entitled to ask for repayment of moneys that they have lent to workers'.<sup>24</sup> The next was that workers are also 'able to look for accommodation or employment elsewhere'.<sup>25</sup> Both reasons show little sympathy for the plight of vulnerable migrant workers. It is the responsibility and control assumed by the unlicensed gangmasters in *Valujevs*, undertaken in the context of a relevant licensing regime which prohibits such conduct, which provided the basis for the successful appeal.

Since the defendants had assumed the relevant responsibility and control in *Valujevs*, the Court of Appeal reversed the trial judge's decision that there was no case to answer in relation to fraud by abuse of position. *Valujevs* then went back to the Crown Court where Mr Valujevs and Mr Mezals were found not guilty of fraud by abuse of position. I do not intend to explore the Crown Court's subsequent decision in this note. The focus here is upon the Court of Appeal's reasoning as to why there was a case to answer regarding fraud by abuse of position. We can agree with the Court of Appeal's conclusion on the facts, but challenge its reasoning. The focus here is upon three important issues.

First, there is ambiguity in the *ratio*, encapsulated in the statement that:

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<sup>23</sup> *ibid* at [44].

<sup>24</sup> *ibid* at [43].

<sup>25</sup> *ibid*.

[T]he critical factor in this case is that there is evidence that the defendants arguably assumed control of, and responsibility for, collecting the wages of the workers, or they controlled the wages at the moment that they were paid over, and the fact that they were acting as gangmasters merely provided the vital context relied on by the prosecution in which that role was assumed.<sup>26</sup>

In particular, it is difficult to understand the relationship between assuming control of and responsibility for monies, and the Gangmasters Licensing Standards as *merely* providing 'vital context'.<sup>27</sup> The duty not to withhold monies owed *comes from* the Licensing Standards. Arguably the two criteria are inextricably linked. Rather than being a mere background matter, the licensing regime in this case feeds directly into the selection of assumption of control of and responsibility for monies as the criteria for determining a position of trust. The relationship between these two factors is not given rigorous analysis by the Court.

It is apparent that a licensing regime which extends to only certain industries, and which sets out minimum labour standards, is driving judicial interpretation of a relevant position of trust.<sup>28</sup> Here is the second point: this is a very unusual and restrictive reading of a relevant position of trust given (i) the scope of sections 1(2)(c) and 4 of the Fraud Act; and (ii) the facts of *Valujevs*.

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<sup>26</sup> *ibid* at [44].

<sup>27</sup> *ibid*.

<sup>28</sup> For elaboration, see Gangmasters Licensing Authority, 'Guidance on Who Needs a Licence' (September 2014) 12-17.

As noted above, there is no indication in section 4 or in the Explanatory Notes to the Fraud Act that a position of trust should be interpreted restrictively. Nevertheless, there are powerful rule of law reasons to avoid over-extending the reach of fraud by abuse of position. But it is hardly self-evident that assumption of responsibility or control over monies is necessary in order to have responsibility to safeguard, or not to act against, another person's financial interests. Identifying assumption of responsibility for or the exercise of control over wages as the justification for a position is to read a further requirement into section 4 of the Fraud Act. This is no more likely to advance rule of law ideals.

Fulford L.J. also stated that some reasons could *not* be used to find a relevant position: the charging of excessive rent; the withholding of work; the lending of money to ensure debt bondage; and circumstances of unequal bargaining power. But these reasons are not necessarily contrary to sections 1(2)(c) and 4 of the Fraud Act, and the accompanying Explanatory Notes. For example, the scope of the negative aspect to the fraud by abuse of position offence (that the defendant is expected 'not to act against' another person's financial interests) is entirely overlooked both by the trial judge and by the Court of Appeal in *Valujevs*. Furthermore, the Explanatory Notes state that a relevant relationship may arise 'in any context where the parties are not at arm's length', but this is directly at odds with the case for commercial freedom pursued by Fulford L.J.<sup>29</sup> While we would expect there to be core examples

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<sup>29</sup> Law Commission, *Fraud*, n 1 above, para 7.38.

of a relevant position, there must also be cases which sit on the penumbra. Given that marginal cases will exist, Fulford L.J.'s brightline exclusion of these reasons, even within the specific context of unlicensed gangmasters, seems premature.

Nor is this restrictive reading convincing on the facts of *Valujevs*. If identification of control or responsibility over monies is an attempt to identify the strongest basis for a relevant position of trust, the point arises that there are *other* strong reasons for leaving fraud by abuse of position to a jury in cases involving vulnerable migrant workers. Workers who are charged exorbitant rent or who are in debt bondage to intermediaries in the labour market are highly dependent upon those intermediaries. Their status in the labour market is nothing short of precarious. It is implausible that such individuals 'are entitled to and expected to look after their own interests', as Fulford L.J. suggests.<sup>30</sup> From this position of precariousness, ought there not to be an expectation that the source of this status must safeguard, or not act against, the vulnerable party's financial interests? Notably the workers in *Valujevs* were migrant workers, and thus part of a group of individuals who labour lawyers have noted 'are made particularly vulnerable by law' itself.<sup>31</sup> Virginia Mantouvalou has identified 'exclusion from labour inspections, minimum wage and maximum working hours' legislation' as examples of ways

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<sup>30</sup> n 4 above at [44].

<sup>31</sup> V. Mantouvalou, 'The Right to Non-Exploitative Work' in *The Right to Work: Legal and Philosophical Perspectives* (Hart, 2014) 50.

in which the law creates vulnerability.<sup>32</sup> Ought the criminal law to afford special protection using fraud by abuse of position to persons who are vulnerable to exploitation because of the rules of a legal system? The concern is that the potential for the section 4 offence to be read in this way is significantly impeded by the reasoning in *Valujevs*.

*Valujevs* is an important case notwithstanding this narrow interpretation of 'position' because it prompts fresh debate about using section 4 of the Fraud Act 2006 to penalise exploitation. This point is explored in my third point below. But first it is key to note that this specific debate sits within a wider context of mapping the role of criminal law in penalising exploitation. When and how ought the criminal law be used to penalise various types of exploitation of persons, such as sexual, labour, and financial exploitation? These are among the most pressing questions to be addressed by criminal law theorists. Against a backdrop of significant public and political concern about exploitation in England and Wales, legal efforts to tackle exploitation have expanded, spanning across branches of the common law. In July 2014 the Supreme Court issued a bold decision in *Hounga v Allen*, blocking the application of the illegality doctrine in a case involving illegal work status.<sup>33</sup> According to the majority, using illegality to strike out Ms Hounga's claim in tort law did not take into account the fact that she had been trafficked into the United Kingdom for the purposes of forced labour. They argued that a 'prominent strain of current public policy against trafficking' requires protection

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<sup>32</sup> *ibid* 50-51.

<sup>33</sup> [2014] UKSC 47.

of victims of human trafficking, and this might on occasion require that the illegality doctrine is itself bypassed.<sup>34</sup> As noted by Alan Bogg and Sarah Green, this is a significant first step given that public policy usually operates to block a claim in tort or contract law.<sup>35</sup>

Alongside willingness to reassess existing civil law and regulatory measures in the light of serious exploitation, there is mounting pressure to use coercive measures to penalise interpersonal exploitation. One significant pressure point comes from international obligations. In an important judgment in *Rantsev v Cyprus and Russia*, the European Court of Human Rights read into Article 4 of the European Convention of Human Rights a right not to be subjected to human trafficking.<sup>36</sup> Following *Rantsev*, it is now an open question as to which other ECHR rights ought to be read so as to protect individuals from serious interpersonal exploitation. There is logical scope for Article 5 ECHR (the right to liberty) to be engaged in relation to labour exploitation, for example. If a right protected by the ECHR is engaged, this begs the question as to what European human rights law requires of states. Strasbourg jurisprudence has developed so as to require effective criminal procedures and preventive measures in certain circumstances.<sup>37</sup> In the last decade there has been a new emphasis on positive duties upon states to

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<sup>34</sup> *ibid* at [52].

<sup>35</sup> See A. Bogg and S. Green, 'Rights Are Not Just for the Virtuous: What *Hounga* Means for the Illegality Defence in the Discrimination Torts' (2015) 44 ILJ 101, 110.

<sup>36</sup> (2010) 51 EHRR 1 [282].

<sup>37</sup> *Aydin v Turkey* (1998) 25 EHRR 251; *Osman v United Kingdom* (2000) 29 EHRR 245.

create criminal law measures to ensure ECHR compliance.<sup>38</sup> Another way of ensuring compliance with international and human rights documents is to use existing criminal law offences to penalise or to prevent exploitation. In England and Wales there are a number of offences which can be read as tackling exploitation, but which are not advertised as exploitation statutes. So one important part of this wider ‘mapping’ process is to ascertain whether the fraud by abuse of position offence ought to be read as a means of penalising some forms of exploitation, as has appealed to criminal law commentators.<sup>39</sup>

However, the third point is that *Valujevs* is a sign that fraud by abuse of position will not do the work of penalising serious exploitation of persons. Judicial interpretation as to who has an expectation ‘to safeguard or not to act against’ the financial interests of another person presents a clear obstacle. If section 4 is read against the context of a licensing standard which sets out minimum labour standards, as in *Valujevs*, it is rendered ineffective in targeting systemic labour exploitation. But arguably there are also conceptual difficulties with using the section 4 offence in this way. This complex topic cannot be pursued to a conclusion here, but, in the spirit of provoking debate, the following points are often overlooked by criminal law commentators who consider fraud by abuse of position a means of penalising exploitation.

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<sup>38</sup> *Siliadin v France* (2006) 43 EHRR 16. For discussion, see A. Ashworth, ‘Human Rights and Positive Obligations to Create Particular Criminal Offences’ in A. Ashworth, *Positive Obligations in Criminal Law* (Hart, 2013).

<sup>39</sup> See n 3 above.



i. A position of safeguarding, or not acting against, another person's financial interests is not necessarily anything to do with exploitation. It may be entirely random whether there is such a position in a case of interpersonal exploitation. An exploiter may have only a fleeting encounter with an exploitee in temporal terms. It would be difficult to argue that a door-to-door salesman who employs exploitative tactics is expected to safeguard a homeowner's financial interests. That would be to interpret even an admittedly vague idea of 'position' in section 4 to the point of absurdity. Similarly, it would be illogical to argue that a door-to-door salesman has a duty not to act against a homeowner's financial interests given that they are strangers.

ii. It is at least plausible to suggest that there is a relationship between vulnerable persons and core examples of serious interpersonal exploitation. It is perfectly possible for an individual to seek to exploit a person simply because that person is vulnerable in relation to him (this being a subjective type of vulnerability). But what about the targeting of persons who are widely recognised as highly precarious members of the labour force (let us call them the objectively vulnerable, though this label is itself imperfect)? There may be greater culpability here. By dishonestly targeting an objectively vulnerable person, an exploiter hopes to gain easy advantage over this person, whether or not that advantage is played out in practice. An individual is hoping that a vulnerable person is an 'easy target'. Beyond the greater likelihood that an exploiter succeeds in his goals, an objectively vulnerable person may be targeted because he is less likely to report his ill-treatment. In the case of

undocumented migrant workers, this could be because of their precarious legal status.<sup>40</sup> In relation to young children or the mentally disordered, there may be barriers to advancing their own interests and/or to reporting exploitation. If this exploratory argument about vulnerable persons and serious exploitation is plausible, it is then worth noting that there is no obvious relationship between section 4 of the Fraud Act and vulnerability and/or vulnerable persons. Moreover, identifying vulnerable migrant workers does not play into the Court of Appeal's reasoning in *Valujevs*.

iii. We could conjecture that an exploiter's targeting conduct is also significant in core cases of interpersonal exploitation.<sup>41</sup> If exploiters typically target already vulnerable persons (such as migrant workers) in order to gain access to opportunities to gain, it may only be subsequently that exploiters act fraudulently within the meaning of section 1 of the Fraud Act 2006. Is it true that part of the gist of serious exploitation is *not just* that an exploiter has acted fraudulently in relation to an otherwise robust person? If the earlier 'targeting' behavior also bears on the seriousness of the exploitative wrong, fraud by abuse of position is an imperfect tool to penalise the wrong because it glosses over this 'targeting' aspect.

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<sup>40</sup> Mantouvalou, n 31 above, 52.

<sup>41</sup> For example, 'targeting' conduct has been found to be key in cases of sexual exploitation of young persons. For discussion of 'localised grooming', and the relevance of 'targeting', see Home Affairs Select Committee, *Child Sexual Exploitation and the Response to Localised Grooming* (5 June 2013) para 8.

*Valujevs* confirms the following: it is hardly self-evident that fraud by abuse of position can be used to penalise serious interpersonal exploitation. Fresh debate about exploitation and property offences in English law is overdue. There are several neglected normative issues. First, it is counterproductive to argue in favour of using fraud by abuse of position to penalise exploitation without first unpacking 'exploitation'. 'Interpersonal exploitation' is a complex umbrella term. 'Exploitation' can and should be disaggregated into a number of distinct exploitative wrongs. This reasoning is supported by the Court of Appeal's judgment in *R v SK*:

In the modern world exploitation can and does take place, in many different forms. Perhaps the most obvious is that in which one human being is treated by another as an object under his or her control for a sexual purpose. But 'slavery or servitude' and 'forced labour' are not confined to exploitation of that sort. One person may exploit another in many different ways. Sexual exploitation is one, domestic servitude, [...] another.<sup>42</sup>

Only once a robust normative account of the type of exploitation in focus is presented, are the foundations laid for a principled discussion about criminalisation. The following questions then move to the fore: ought the criminal law be used to penalise this type of exploitation, and, if so, how? If criminalisation is justifiable we cannot expect an existing criminal law offence to have an exact fit with the contours of the exploitative wrong. But it is

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<sup>42</sup> *R v SK* [2011] EWCA Crim 1691 [41].

reasonable to ask whether current measures are justifiable. Acknowledging the diversity and seriousness of interpersonal exploitation may require a more specific criminal law response than that provided by section 1(2)(c) of the Fraud Act, and one which marks out the particular blameworthiness of the exploitative wrongdoing.