

Rt Hon Priti Patel MP
Home Secretary
Home Office
2 Marsham Street
London
SW1P 4DF

6 November 2020

Dear Home Secretary,

'The Modern Slavery Act 2015 statutory defence: A call for evidence'

On 8 October 2020, I published my review [The Modern Slavery Act 2015 statutory defence: A call for evidence](#) which examined the use of, and the challenges associated with, the defence created by s.45 of the Modern Slavery Act. The report made ten recommendations, five of which relate to the Home Office:

3. The CPS should in all cases request the full trafficking consideration minute from the SCA in order to weigh and test the evidence in line with Home Office statutory guidance and CPS guidance;
4. The SCA should develop and implement information sharing protocols with a range of bodies;
8. The Home Secretary should write to all local authorities to ensure that they understand what the NRM means in the context of children;
9. The SCA should provide clear guidance to First Responders about the circumstances in which a separate NRM referral should be submitted;
10. The SCA should improve the recording and monitoring of repeat referrals to the NRM to better understand the scale of continued trafficking and re-trafficking.

In the course of drafting my review, I have discussed these findings and recommendations with officials and other key stakeholders. I am aware that there is work in progress between the SCA and the Modern Slavery and Organised Immigration Crime Unit to develop an information sharing protocol and my office would be very happy to discuss with officials any other relevant bodies who would benefit from a similar arrangement being in place.

I will also be writing to local safeguarding bodies in relation to recommendation 6 (that each child within the NRM is referred to the relevant local authority Children's Social Care who should convene a Strategy Discussion under Section 47 of the Children Act 1989) and to the Department of Education regarding recommendation 7 (that [Working Together to Safeguard Children Statutory Guidance](#) should be updated to reflect the specific circumstances of extra-familial harm).

Finally, my review also concluded that it is essential that the police, CPS and courts collaborate to identify a way in which this area of significant public interest can be monitored both qualitatively

and quantitatively and that it should be reviewed again in due course. I have raised this with them directly.

I intend to review progress on these recommendations in the New Year and would therefore be grateful to receive a formal update by Friday 15 January 2021.

I look forward to receiving your response. In the interests of transparency, I request that you respond in a way that enables me to publish your letter on my website.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Sanjiv". The signature is fluid and cursive, with a prominent initial 'S'.

Independent Anti-Slavery Commissioner



Home Office

Home Secretary

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

BY EMAIL ONLY

Dame Sara Thornton, Independent Anti-Slavery Commissioner

1 March 2021

Dear Sara,

Thank you for your letter of 6 November regarding the recommendations from your call for evidence on the use of the statutory defence under section 45 of the Modern Slavery Act (MSA) 2015.

As you know, the section 45 statutory defence was introduced to protect vulnerable victims from being prosecuted for crimes they were forced to commit by their exploiters. However, following concerns raised by law enforcement partners about the potential misuse of the defence, the Home Office asked the Independent Reviewers of the MSA to look at the effectiveness of the defence. While the Review found that the section 45 provisions achieve the right balance between the potential for misuse and need to protect victims, they also reported concerns from law enforcement agencies and prosecutors about the difficulties in disproving the defence to the criminal standard. Subsequently, the Government committed to work with law enforcement and criminal justice system partners to continue monitoring the use of the defence at all stages in the criminal justice system. I am very grateful for your work in carrying out your call for evidence, the findings of which will help to inform our ongoing engagement with partners on the use of the defence.

The Home Office's response to the recommendations in your report which fall within its remit is set out below.

Firstly, in relation to **recommendation 3 that the 'Crown Prosecution Service (CPS) should in all cases request the full trafficking consideration minute from the Single Competent Authority (SCA) in order to weigh and test the evidence in line with Home Office statutory guidance and CPS guidance'**, I want to reassure you that the SCA routinely shares information with the police to support criminal investigations, and copies of National Referral Mechanism (NRM) decisions are provided to relevant police forces per paragraph 11.6 of the Statutory Guidance. It is for the relevant police force to share this information with the CPS as required and, when providing information to the police, the SCA reminds officers of their responsibility to share this onwards with the CPS where relevant. This process includes cases where the section 45 defence is raised. The police, SCA and CPS meet regularly to discuss their shared processes.

On the subject of **recommendation 4 that 'the SCA should develop and implement information sharing protocols with a range of bodies'**, I note your reference to the SCA's ongoing work to develop an information sharing protocol with policing colleagues in England and Wales. This protocol will seek to clarify information sharing practices between police forces and the SCA. While this is an important first step, the SCA will also consider whether further information sharing arrangements with other bodies would further strengthen this work. My officials would welcome your

continued support in improving information sharing between organisations involved in tackling modern slavery.

In response to **recommendation 6, that ‘every child within the NRM should be referred to the relevant local authority Children’s Social Care who should convene a Strategy Discussion under Section 47 of the Children Act 1989’**, I want to highlight ongoing work to test how to better integrate decision making and safeguarding for children through the devolved decision-making pilots. As you will be aware, as part of NRM Transformation, my department is piloting a devolved model of decision making for child victims of modern slavery. We are seeking to empower local authorities with responsibility for children’s social care to make decisions about whether children are victims of modern slavery in conjunction with their local safeguarding partners. The Home Office launched a fair and open competition to identify a range of appropriate sites to pilot devolved decision making for child victims in the UK and this competition closed in December 2020. We will shortly be announcing the successful bidders. We hope these pilots will determine whether there is a benefit to taking decisions about whether a child is a victim of modern slavery within existing safeguarding structures. We are grateful for the work of your office to further our understanding of what works in multi-agency decision making, and for your continued support through participating in the independently chaired advisory group that will oversee the evaluation of the pilots.

With regard to **recommendation 8 that I should write to all local authorities to ensure that they understand what the NRM means in the context of children**, I understand the challenges in ensuring that local authorities are aware of the importance of the interaction between the NRM and safeguarding structures. In the past 12 months we have published the Modern Slavery Act statutory guidance, which sets out the current process for all local authorities. My officials have worked to ensure that local authorities are aware of their responsibilities as set out in this document by launching the first standardised training module for First Responders in July 2020.

Furthermore, we are continuing to progress work to transform the NRM. This programme will seek to ensure victims have their cases settled promptly, receive support tailored to their recovery needs from the outset, and are empowered to move on with their lives. I plan to write to local authorities when I have made these changes.

As part of this programme, we are progressing with the next phase of the national roll-out of the Independent Child Trafficking Guardian (ICTG) service which will target areas with the highest need. Last year we launched two grant competitions; one to deliver ICTGs in additional areas and one to continue the delivery of the ICTG service in the Early Adopter Sites. We will shortly be awarding these and therefore make the service available to two thirds of all local authorities across England and Wales in 2021. As part of this phase of the ICTG roll out, we will be testing the implementation of three recommendations made by the Independent Review of the Modern Slavery Act 2015. We will test removing the 18-month limit to support; enabling those children who need it, to continue to receive ICTG support following their 18th birthday; and allowing children who have a figure of parental responsibility for them in the UK to access one-to-one support where there is exceptional need.

Recommendation 9 calls on the SCA to provide guidance to First Responders about the circumstances in which a separate NRM referral should be submitted. The Statutory Guidance under the Modern Slavery Act 2015 was published in March 2020, providing a clear framework of support for some of the most vulnerable people in our society. The guidance clarifies the roles and responsibilities of frontline staff and local stakeholders and sets out the support victims are entitled to and how this is accessed. This includes the requirements for First Responders to make a referral of a child victim of modern slavery to the local authority and to the NRM. The Department for Education, as the responsible department for child safeguarding, has also ensured that the guidance clarifies that, where appropriate, the Local Authority should convene a strategy discussion, and then provide early help, complete the assessment under section 17 of the Children Act 1989/2004 or

initiate a section 47 enquiry. We also recently rolled out online training for first responders and clarified the processes for dealing with child victims.

Finally, in response to **recommendation 10**, that '**the SCA should improve the recording and monitoring of repeat referrals to the NRM to better understand the scale of continued trafficking and re-trafficking**', the new digital system was built to support the NRM process and is now used by all caseworkers in the SCA when they make decisions on potential victims of modern slavery. The system makes it easier for those on the front line to refer victims into support by providing a single point for referrals across the UK and seeks to support an effective and efficient case management process in enabling the identification of victims. The SCA is currently testing appropriate methods to record repeat referrals into the NRM using the new digital system to ensure there is an accurate picture across the UK. Once we have tested appropriately, we will look to roll out as standard practice as soon as practicable.

I understand that you have written to the Secretary of State for Education about the 'Working Together to Safeguard Children' guidance. He will respond separately to you on this point, but I want to assure you that our two Departments are committed to working together with the police and other agencies to support child victims of trafficking.

My department will continue to work closely with your office as these areas of work develop and will be able to provide more detailed updates on how the recommendations from your review are being taken forward.

Thank you for your continued cooperation on working with my department on reviewing section 45.

With our good wishes


Rt Hon Priti Patel MP