

Max Hill QC
Director of Public Prosecutions
The Crown Prosecution Service
102 Petty France
London
SW1H 9EA

6 November 2020

Dear Max,

'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, three of which relate to the CPS:

1. The CPS legal guidance should clarify precisely what requirements there are on defendants and prosecutors when considering and deploying the statutory defence.
2. Training in the statutory defence needs to be prioritised by the police, CPS, defence lawyers, magistrates and judiciary.
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.

During the review I have discussed the findings and these recommendations with Baljit Ubhey and her colleagues, and I am aware that some work is already underway relating to the statutory defence.

The methodology was necessarily restricted to a call for evidence from interested parties, as there is a lack of data being collected by any official body about the use of this defence. This is an area of significant public interest and it is essential that the police, CPS and courts collaborate to identify a method of monitoring the use of the defence at all levels of the criminal justice system. In addition to my request for an update on the above recommendations, I would be interested to hear details of any proposed approach to this.

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,



Independent Anti-Slavery Commissioner



Dame Sara Thornton DBE QPM
Independent Anti-Slavery Commissioner
5th Floor, Globe House
89 Eccleston Square
London SW1V 1PN

14 January 2021

Dear Sara,

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

Thank you for your letter of the 6 November 2020 following publication of your review into the section 45 Modern Slavery Act Statutory Defence.

I am very grateful for the work you are doing to highlight many of the challenges faced by all agencies in ensuring the effective operation of this provision. I note the ten helpful and practical recommendations you have made for each agency to consider, which are aimed at making the current system work better.

I am pleased to confirm the CPS accepts recommendations one and two and can clarify the agreed guidance and position on recommendation three, as follows:

- i. **The CPS legal guidance should be amended, setting out the limbs of the statutory defence and the requirement for each of the limbs to be considered.**

Response: Accepted, the CPS will review and revise the CPS legal guidance on Modern Slavery and Human Trafficking. This will provide further clarity to prosecutors and will incorporate recent case judgments influencing how section 45 should operate. We will also ensure there are clear links to this guidance in other relevant legal guidance (you will note for example, that new guidance published last month on [Decision Making in "Gang" Related Offences](#) included these links).

- ii. **Training in the statutory defence needs to be prioritised by the police, CPS, defence lawyers, magistrates and judiciary.**

Response: Accepted, the CPS has appointed and trained prosecutor trainers across all CPS Areas to ensure greater resilience at a local level. Training to all prosecutors is underway and where local police wish to attend, invitations will be extended. Induction training for all newly appointed prosecutors and youth prosecutors also covers non-punishment principles, including the section 45 defence.



- iii. **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.**

Response: The CPS recognises the importance of obtaining the full modern slavery consideration minute from the Single Competent Authority (SCA) in order to carry out their assessment of whether the non-punishment principles (including section 45) apply.

The CPS legal guidance reminds prosecutors that the duty of disclosure under the CPIA may apply to the SCA minute and other material relating to the decision making process and therefore the material will be requested by the police and the SCA should supply it to them in an unredacted form. The disclosure officer should then assess the material and share this with the prosecutor in the appropriate format and the prosecutor will review this information in accordance with CPIA.

In addition to the specific recommendations for the CPS, you have also highlighted the lack of data collected by any official body about the use of this defence. You have emphasised that this is an area where it is essential that the police, CPS and the courts collaborate to identify a method of monitoring the use of the defence at all levels of the criminal justice system.

We agree that more robust and accurate data collection about the use of this defence would be useful, but this remains a technical and practical challenge for the CPS and our partners. The CPS will however continue to work with partners to explore possibilities in order to improve cross-system data.

I hope this is helpful and provides reassurance that the CPS is committed to improving how we deal with cases when the statutory defence is raised.

Yours ever,



MAX HILL QC
DIRECTOR OF PUBLIC PROSECUTIONS