

22 December 2020

The Rt Hon Gavin Williamson CBE MP
Secretary of State for Education
Department for Education
Sanctuary Buildings
20 Great Smith Street
Westminster
London
SW1P 3BT

Dear Secretary of State,

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

I am writing in my capacity as the UK’s Independent Anti-Slavery Commissioner, a statutory provision of the Modern Slavery Act 2015. Within this role, I have a UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences and the identification of victims.

My [Strategic Plan 2019-2021](#), laid before Parliament by the Home Secretary, outlines four priorities: improving victim care and support; supporting law enforcement and prosecution; focusing on prevention and getting value from research and innovation. The plan set out my commitment to work with criminal justice agencies to gain a better understanding of what was happening on the ground in respect of the use of the statutory defence provided by Section 45 of the Modern Slavery Act 2015. This statutory defence enshrined in law the principle of non-punishment of victims for their involvement in criminal activities which they have been compelled to do as a consequence of their trafficking.

In January 2020 I launched a call for evidence which invited stakeholders with practical experience and knowledge of the statutory defence to submit written evidence. I received more than 100 responses containing over 200 case examples. This included responses from law enforcement, the Crown Prosecution Service, legal chambers, Non-Governmental Organisations and academics. Over the summer, I also chaired two roundtables which brought together subject matter experts to share and consider the emerging issues uncovered by the review.

On 8 October I published my review [The Modern Slavery Act 2015 statutory defence: A call for evidence](#). The review identified four key issues:

- 1) That the police are not consistently considering from the outset of an investigation whether the suspect could be a victim of trafficking and whether the statutory defence may apply;
- 2) That investigations and prosecutions are being discontinued as soon as the statutory defence is raised;

- 3) That there is an over-reliance throughout the criminal justice system on the National Referral Mechanism decision making of the Single Competent Authority;
- 4) That the statutory defence is being raised late in the criminal justice process.

These issues were found to be leading to three overall consequences:

- 1) Abuse of the statutory defence;
- 2) Victims for whom the statutory defence was intended are not benefitting from it;
- 3) Inadequate child protection intervention following National Referral Mechanism referrals triggered by the statutory defence.

The review subsequently made ten recommendations, one of which relates specifically to the Department for Education:

7. The Department for Education should review and update 'Working Together to Safeguard Children' as recommended by the Child Safeguarding Practice Panel Review.

In the course of drafting my review, one of the virtual roundtables explored the interaction between the statutory defence, the National Referral Mechanism and child protection processes. A number of stakeholders joined this roundtable including the Department for Education, the Home Office, local authorities, law enforcement, the Youth Offending Service and Non-Governmental Organisations. During the roundtable we reflected on the 'Working Together to Safeguard Children' statutory guidance and discussed how more detailed, practical guidance for frontline practitioners on supporting children at risk of, or subject to, extra-familial harm might assist.

I intend to review progress on these recommendations in the New Year and would therefore be grateful to receive a formal update by Friday 29 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



2020-0071531POSoS

Rt Hon Gavin Williamson CBE MP
Secretary of State

Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/help/contactus

Dame Sara Thornton DBE QPM
Independent Anti-Slavery Commissioner
By email: shelley.perera@iasc.independent.gov.uk

4 February 2021

Thank you for your letter of 22 December, outlining your role and your review of the Modern Slavery Act 2015 section 45 statutory defence. I apologise for the delay in responding.

The evidence and findings in your review are important in our collective efforts to ensure that child victims of trafficking are adequately protected and provided with the support they need. I assure you that the Government is giving due consideration to the recommendations you have made.

You ask specifically about progress on Recommendation 7 in your review, namely, that my department updates the '*Working Together to Safeguard Children*' statutory guidance, as recommended by the National Child Safeguarding Practice Panel Review, to reflect the specific circumstances of children at risk of, or subject to, extra-familial harm.

My officials are in regular discussion with the National Panel about how best to take this and other recommendations in their thematic review '*It was hard to escape*' forward. We are committed to a full revision of the statutory guidance and are considering the timeframe for doing so carefully. I am keen that all our stakeholders are given the opportunity and time to engage with any future review and that we run a full public consultation before making any substantial updates to '*Working Together*'. My officials will keep your office updated on developments.

In the meantime, I would like to reassure you of my commitment to working alongside the Home Secretary as well as with local authorities, the police, Crown Prosecution Service and the courts to protect and support children and young people affected by trafficking.

Thank you for writing on this important matter.

Rt Hon Gavin Williamson CBE MP
Secretary of State for Education