

5 March 2021

Dear Regional Safeguarding Board Chair,

'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.

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, including responses from law enforcement, the Crown Prosecution Service, legal chambers, Non-Governmental Organisations (NGOs) and academia. Over the summer, I also chaired two roundtables which brought together subject matter experts from the Home Office, the Department for Education, law enforcement, the criminal justice system, local authorities, NGOs and academia 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 interconnected issues:

- 1) That 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 (NRM) 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 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 practical recommendations, one of which is particularly relevant for Regional Safeguarding Boards.

6. Every child within the National Referral Mechanism 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.

Having looked at Working Together to Safeguard People 2019 statutory guidance¹ and the Wales Safeguarding Practice and Procedures Guides², I am pleased to see modern slavery and specifically child criminal exploitation listed as types of harm. As highlighted during my review, I recognise the challenges that frontline professionals can face in responding to extra-familial harm in practice, therefore I welcome the efforts that have been made to produce the All Wales Practice Guides³. It is encouraging to see that there are chapters on both [safeguarding children who may have been trafficked](#) and [safeguarding children from Child Criminal Exploitation](#), firmly placing these areas within the remit of safeguarding whilst noting that Child Criminal Exploitation “can and does cause significant harm”. The guide also provides further helpful information for frontline professionals on carrying out a proportionate response within this context, including reporting “children at risk” (Section 130) under Part 7 of the Social Services and Well-being (Wales) Act, a multi-agency strategy discussion and where relevant, further enquiries under Section 47 of the Children Act 1989.

Child trafficking is child abuse, therefore requires a child protection response. Child trafficking is defined by the United Nations' Palermo Protocol as the “recruitment, transportation, transfer, harbouring or receipt” of a child for the purpose of exploitation, recognising that a child cannot consent to his or her own exploitation. It encompasses sexual exploitation, criminal exploitation, forced labour, forced criminality and organ harvesting and includes both children who are trafficked into the UK and those who are trafficked within the UK.

I therefore urge you to take this opportunity to review your current internal child safeguarding pathways to ensure that matters giving rise to child trafficking or exploitation concerns are subject to multi-agency discussion and co-ordination using the provisions of Section 47 of the Children Act 1989 and operating within the Working Together to Safeguard People 2019 and the Wales Safeguarding Procedures and Practice Guides framework. You are fortunate in Wales to have been in the early stages of national roll-out for the Independent Child Trafficking Guardians as a provision of the Modern Slavery Act 2015, so I would encourage you to ensure that these specialists are also embedded within your local and regional responses.

¹ Welsh Government. 2019, [Working Together to Safeguard People](#)

² Wales Safeguarding Procedures Project Board. 2019, [Wales Safeguarding Procedures and Practice Guides](#)

³ Wales Safeguarding Procedures Project Board. 2019 [All Wales Practice Guides for Safeguarding Children](#)

Finally, I am currently exploring the potential of hosting a virtual event that brings together learning and good practice in response to Child Criminal Exploitation. If you would be interested in being involved in this event or wish to highlight any examples of good practice that you are aware of please contact April McCoig, Victims and Partnerships lead within my office at April.McCoig@iasc.independent.gov.uk.

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 "Sam Yuen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Independent Anti-Slavery Commissioner