

4 February 2021

Ms Jenny Coles  
President of the Association of Directors of Children's Services Ltd  
49 Piccadilly  
Manchester  
M1 2AP

Dear Ms Coles,

**'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, two of which are particularly relevant for Children's Services:

**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.**

**7. The Home Secretary should write to all local authorities to ensure that they understand what the NRM means in the context of children.**

On recommendation 6, having engaged with stakeholders I am not convinced that a strategy discussion and enquiries under Section 47 of the Children Act 1989 are always taking place in the context of child trafficking, specifically for cases of child criminal exploitation. I wanted to make you aware that I have written to all Local Safeguarding Children Partnerships urging them to review their current local 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 Children 2018 framework.

As you will be aware, the most recent iteration of Working Together to Safeguard Children<sup>1</sup> confirms that Section 47 enquiries should be initiated where there are concerns about 'all forms of abuse and neglect' and 'extra familial threats including radicalisation and sexual or criminal exploitation'. I recognise however that there can be challenges in applying these frameworks in practice to extra-familial harm. My review therefore also recommended that the Department for Education should review and update Working Together to Safeguard Children 2018 to reflect the specific circumstances of children who are at risk of criminal exploitation, as recommended<sup>2</sup> by the Child Safeguarding Practice Panel Review. I have written to the Secretary of State for Education to ensure that he is sighted on this recommendation.

On recommendation 7, within the case examples submitted to the call for evidence, there was evidence of misunderstanding of the role of the NRM and a lack of awareness among frontline professionals about what it means in the context of children. Whilst the NRM acts as a framework to both identify and support adult victims of modern slavery, for children, although Section 48 of the Modern Slavery Act does make provision for Independent Child Trafficking Guardians (ICTGs), the duty to safeguard those referred into the NRM remains with the local authority and other local safeguarding partners. It is evident that this is not always well understood across all agencies and that there are misconceptions about the support that is provided for children through the NRM

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<sup>1</sup> HM Government (2018), '[Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children](#)'.

<sup>2</sup> The Child Safeguarding Practice Review Panel (2020), '[It was Hard to Escape: Safeguarding children at risk from criminal exploitation](#)'.

process. My review therefore also recommended that the Home Secretary write to all local authorities to provide clarification on this.

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](mailto: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,



**Independent Anti-Slavery Commissioner**

CC: Sarah Caton, Chief Officer, Association of Directors of Children's Services: [sarah.caton@adcs.org.uk](mailto:sarah.caton@adcs.org.uk)  
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10 February 2021

Dear Dame Sara

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

Thank you for your letter of the 4 February, which you also copied to Yvette Stanley at Ofsted. I am therefore copying Yvette into my reply to you. I have also copied in ADCS's Chief Officer, Sarah Caton.

If you feel it would be helpful to meet with ADCS, we would be happy to do so. Indeed, there may be some benefit in ADCS and Ofsted meeting with you together, at your discretion.

Yours sincerely



Jenny Coles

ADCS President 2020/21