Thank you for your email of 24 June 2010 to the Lord Advocate in relation to human trafficking. The Lord Advocate is on leave and I am therefore replying on her behalf.

You have asked about the position in Scotland regarding the issuing of guidance to Scottish police forces about the prosecution of victims of trafficking and about prosecutions in Scotland for human trafficking. In particular, you refer to evidence given to the Equal Opportunities Committee of the Scottish Parliament by John Watson of Amnesty International.

Your question about guidance to the police in Scotland is framed by reference to Mr Watson’s suggestion that such prosecution guidance exists in England and Wales and that it “states clearly that trafficked victims should not be prosecuted”.

The Crown Prosecution Service (CPS) guidance in England and Wales is available on its website (www.cps.gov.uk) and does not, contrary to Mr Watson’s suggestion, provide a blanket statement that victims of trafficking should not be prosecuted. Rather, it sets out the factors which prosecutors must consider when deciding whether a prosecution of a victim of human trafficking for immigration offences is in the public interest.

The following factors are identified by the CPS as relevant when deciding where the public interest lies in such a case:

- is the person a "credible" trafficked victim i.e. does the investigating officer have reason to believe that the person has been trafficked?
- the role that the suspect has in the immigration offence;
- was the immigration offence a direct consequence of their trafficked situation;
- were violence, threats or coercion used on the trafficked victim to procure the commission of the offence;
- was the victim vulnerable or put in considerable fear.
The CPS guidance also goes on to direct prosecutors to consider whether the suspect has a credible defence of duress, and in such circumstances permits the discontinuation of the case.

It would be inappropriate, in my view, for guidance to prosecutors and police officers in Scotland to advance the position put forward by Mr Watson. Guidance for prosecutors already exists in Scotland, but I have asked my officials to prepare additional guidance which raises awareness of human trafficking and sets out the public interest considerations which must be taken into account when deciding whether to prosecute someone who has been trafficked.

You have also asked why there have been no prosecutions in Scotland for human trafficking offences. I am afraid this is not the case. COPFS has successfully prosecuted persons for offences against a background of people trafficking. Following Operation Pentameter 2, targeting people traffickers, eighteen individuals were prosecuted and convicted of various charges including trading in prostitution, offences under the Identity Cards Act 2006, the Immigration Act 1971 and attempting to pervert the course of justice. Sentences ranging from financial penalties to imprisonment were imposed.

Prosecutors in Scotland take human trafficking offences very seriously and they are dealt with at a senior level. Cases of human trafficking are referred for consideration of Crown Counsel at an early stage and the National Sexual Crimes Unit deals with all human trafficking cases with a sexual element. Additionally, Prosecutors are undergoing training in this area which will expand the level of expertise which already exists. Guidance for prosecutors is available and this is updated to take account of new knowledge and increased understanding.

I hope this information is helpful.

FRANK MULHOLLAND