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Christine Grahame MSP  
Convener  
Justice Committee  
Scottish Parliament  
Edinburgh  
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28th April 2015

Dear Christine,

I refer to the evidence I gave to the Justice Committee on the 24<sup>th</sup> March 2015 and the evidence given by the Cabinet Secretary for Justice on the 31<sup>st</sup> March 2015. I wish to clarify one point which was raised by Jenny Marra MSP on the 31<sup>st</sup> March 2015 regarding my instructions on prosecuting the victims of human trafficking and any statutory defence which might be introduced under the Bill.

As I highlighted in my evidence on the 24<sup>th</sup> March 2015 should Parliament decide to implement the terms of the EU Directive on Human Trafficking by introducing a statutory defence, then I would be bound by that decision, it being the will of Parliament and the terms of that statutory defence would outline how I could act in relation to those types of cases. I believe that any Instructions which I were to publish would be governed by the terms of any statutory defence that was included in the Bill, as that statutory defence would reflect the will of Parliament.

Three key concerns arise for me in relation to the use of a statutory defence. Firstly, as in the UK Modern Slavery Bill and the Human Trafficking and Exploitation Act in Northern Ireland, there may be a large number of exceptions for offences where the statutory defence would not apply. This would significantly restrict the protection for victims. Secondly the statutory defence would require evidence for its application, evidence which will require to be of a standard which could be presented at Court. Thirdly the statutory defence will require the victim of human trafficking to do the work to establish this evidence themselves, requiring them to be proactive in providing information to their solicitor.





As I highlighted in my evidence my published Instructions will provide a flexible and comprehensive safeguard in relation to any offending by a victim of human trafficking, where information and intelligence will be able to be taken from any source and assessed appropriately irrespective of the information provided by the victims themselves.

I hope this information clarifies my position and is of assistance to the Committee.

*Best wishes,*

*Frank*

**FRANK MULHOLLAND QC**



INVESTOR IN PEOPLE  
**The Scottish Government**