

Justice Committee

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service

Written submission from the Sheriffs' Association

Preliminary Observations

1. The Sheriffs' Association membership comprises sheriffs throughout Scotland. They are judicial office holders. The rule of law is the core principle upon which public society is based. The administration of justice requires that judges remain impartial and act justly. Equally important is the public perception, and therefore trust, that judges are impartial and act justly. Judges at all levels are in a unique constitutional position, independent of any political interference or influence, but also constrained in what they can contribute in any political forum. It follows that judges and sheriffs are not 'stakeholders' in any process.

2. Against that background, what follows is intended only as a constructive attempt to improve the structure and working of the courts, not as comment on policy.

3. We refer to the remit of the Scottish Parliament Justice Committee, which is set out in full in the call for written evidence, and would identify the following statements within the remit for comment:

Independence of prosecution

4. *'The COPFS is Scotland's independent prosecution service, acting in the public interest to help bring offenders to justice.'*

The Sheriff's Association strongly endorse this statement. It is vitally important that the administration of justice is independent (and as importantly, can be seen by the public to be independent) of political direction. Parliament decides the criminal law and procedure through the legislative process. It is for prosecutors and judges to apply the laws passed by parliament.

In every case, the COPFS requires to make a decision whether to prosecute, what charges to prefer, in which court and at what level. These matters are solely within the COPFS discretion. Neither parliament nor the court has any involvement. That allows, and requires, the COPFS to exercise impartial, non-political judgement. The sole criterion for the COPFS in exercising its judgement is what is in the public interest. The concept of 'public interest' is an imprecise one, and will vary from case to case. What is in the public interest requires careful, professional judgement. The public interest must be capable of including not only popular causes but also a wider variety of viewpoints and interests, and in particular may require taking politically unpopular decisions. It is vital that such discretion be permitted and encouraged. Historically, this has been a core principle of the Crown in Scotland. In order to allow this process, the COPFS must be independent of political and popular interests.

Efficiency of COPFS

5. *'The overall efficiency and effectiveness of the COPFS in its core role in considering reports about crime from the police and bringing prosecutions.'*

We are unable to comment on COPFS considering reports and bringing prosecutions, as sheriffs are not involved in these processes.

Improvements

6. *Are there ways in which the services provided by the COPFS could be improved – for instance, through increased use of technology, further reforms to criminal procedure, or better case management?*

Sheriffs have a responsibility, amongst other matters, to oversee and ensure the efficient running of the courts. The COPFS is the biggest single user of the courts, so their practices have a direct effect on the running of the courts. The sheriff courts vary considerably in size, character and structure, and practices and issues will vary from court to court.

There has been for some time, however, widespread anecdotal evidence from sheriffs about what seems to be relatively high rates of adjournment of trial diets caused by logistical issues. Many of these issues appear to result from preventable causes, such as witnesses not having been cited, productions not being brought to court, CCTV discs not being formatted or made available to the defence, expert reports not having been received, to mention some of the most common reasons given in court. Where this occurs, it leads to cases being adjourned and a consequent delay in hearing the case, increased loadings of future trial courts and, potentially, in a decrease in guilty pleas being tendered.

We recognise that preparation of a trial is often a complex matter, and it is accepted that these types of problems will arise from time to time. Some courts however, experience these problems to a significant degree. In many courts there have been significant efforts by the Crown to address these issues, and any review of these would require to be on a court-by-court basis. In some courts they are being resolved. In some courts they remain. Sheriffs are not party to the preparation of cases, and so are not best placed to comment on causation, but from explanations tendered by the Crown in court, these appear often to be traceable back to lack of resources. The procurators fiscal appear to have high workloads, which means that preparation time is very limited. This in turn appears to delay or restrict preparation in some cases, which leads to any problems not being recognised and addressed much before the trial diet itself.

We can do no more than comment on this feature, as we see only the results, not the causes.

Stakeholders

7. *'Please outline how well you consider the COPFS works with other stakeholders in the criminal justice system.'*

We are not stakeholders. We cannot emphasise this enough. Judicial office holders cannot 'work with' the Crown. The Crown is a litigant like any other, and each trial demands that the judge or sheriff approach the question of the accused's guilt with an open mind and scrupulous fairness.

As a matter of administration, we would observe that the Crown appears to have adopted a practice of citation of witnesses via the police. This is often mentioned in court as a reason for trials not being prepared, as police citation appears to be somewhat hit-and-miss, and often the citation has not been returned in time for the trial. We are aware that formerly the Crown had a dedicated unit of process-servers, and we would at least raise the question as to whether this might be reinstated. If witnesses are not cited, trials cannot proceed, with resulting delay and cost. We would question whether ceasing the use of process-servers was truly cost-effective, having regard to the overall working of the courts and, indeed, the workload of the police.

On a more positive note, disclosure of Crown evidence to agents now seems to be working well. There were many teething problems when disclosure went online, but these seem to largely have been resolved, avoiding unnecessary adjournment of trials.

Resources

8. *'Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its core role effectively? Is it appropriately 'future-proofed'?'*

It appears to us, from one step removed, that COPFS does not have sufficient resources.

The level of resources devoted by the COPFS to running Sheriff Court cases appear to be appreciably lower than those devoted to running High Court cases. While it is appropriate that the High Court is well-supported, we would invite consideration of the level of resources devoted to Sheriff Court cases.

We have already mentioned problems arising due to late or non-citation, reports not being available, IT problems not being identified in advance, productions not being considered and made available in advance and the like. These are logistical problems which, for the most part, need not arise if sufficient resources are allocated to each case.

Victims and witnesses

9. *'How well does the COPFS respond to the needs of victims of crimes and of witnesses?'*

We do not have sufficient information to be able to comment. We would, however, reiterate the vital requirement that the COPFS remains an independent prosecution service. It is necessary to recognise that the needs of victims and witnesses,

important as they are, are not the only criteria which an impartial body, acting in the public interest, requires to take into account.

Inspectorate of Prosecution in Scotland

10. *'What is your awareness of the existence and role of the IPS'.*

We do not receive information about the IPS or its practices.

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