

## **Justice Committee**

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

#### **Written submission from the Crown Office and Procurator Fiscal Service**

The Crown Office and Procurator Fiscal Service (COPFS) welcomes the Justice Committee Inquiry and looks forward to participating in the evidence sessions to explain our role and purpose in securing justice for the people of Scotland.

COPFS is Scotland's sole prosecution service. COPFS receives reports about crimes from the police and other reporting agencies and then decides what action to take, including whether to offer a direct measure or to prosecute someone and if so, in what forum. COPFS also investigates deaths that need further explanation and investigates and prosecutes allegations of criminal conduct against police officers.

The COPFS budget for the current year is £113.45m. This includes additional funding for complex investigations and the prosecution of domestic abuse cases. The COPFS budget has remained static for five years since it was £118.3m in 2009-10.

Further information about the work, structure and resources of COPFS can be found here (COPFS Fact Sheet 1<sup>1</sup>).

#### **Changing Landscape**

##### ***Legislative Changes***

There have been a number of significant legislative changes throughout the last ten years that have affected COPFS. These have been introduced to modernise the criminal justice system and the investigation of sudden deaths as well as to improve the service given to people who come into contact with the criminal justice system as victims and witnesses. COPFS has supported all of these changes and we have absorbed the associated increased costs by working closely with other parts of the criminal justice system, finding efficiencies and investing in our staff and digital technology.

The Criminal Justice and Licensing (Scotland) Act 2010 brought in a new stalking offence. The number of cases increased from 440 in 2011-2012, to 1640 in 2015-16. This signifies an increased confidence in the way that stalking cases are dealt with both by the police and COPFS.

Unresolved homicides are never closed. The Double Jeopardy (Scotland) Act 2011 allows us in limited circumstances to prosecute someone for a second time. Additionally, the COPFS Cold Case Unit had been set up earlier in 2011. COPFS maintains a database of all cold case homicides and cases to which the Double Jeopardy (Scotland) Act may apply. The Cold Case Unit works closely with Police

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<sup>1</sup><http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

Scotland to review these cases to ascertain if there are any new evidential developments, including advances in forensic techniques, which would assist in providing a basis for criminal proceedings.

The Victims and Witnesses (Scotland) Act 2014 expanded the scope of special measures to include additional categories of witnesses and introduced automatic entitlement to special measures for some classes of witnesses. It also implemented EU legislation giving victims the right to ask for a decision not to prosecute to be reviewed. The legislation has succeeded in its aim of increasing the number of witnesses who benefit from special measures<sup>2</sup> and the engagement of victims in prosecution decision making<sup>3</sup>.

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is still to be implemented in full but widens the scope of fatal accident inquiries to include jurisdiction to inquire into the circumstances of the death of Scottish residents abroad. The UK Government had also previously legislated in the Coroners and Justice Act 2009 to allow inquiries to be held into military service deaths abroad. Under section 8 of the 2016 Act, the Lord Advocate has published a Family Liaison Charter, which enhances engagement between COPFS and bereaved relatives by increasing and formalising the frequency of contact with them. Procedural changes, which are still under consideration, may also affect the work of COPFS.

The Criminal Justice (Scotland) Act 2016, which is yet to be implemented, introduces significant changes to police powers; requires the publication of Codes of Practice in relation to investigative functions and stop and search powers; and makes changes to appeal and sentencing processes. As a consequence, COPFS will ensure that all staff are trained on these new powers and processes. In addition, prosecutors will now have a role to play where an accused person challenges liberation conditions set by the police in respect of investigative liberation and undertakings; and in respect of applications for post charge questioning. This Act also aims to improve the management of Sheriff and Jury business across Scotland, which should bring significant improvements for victims and witnesses, in particular in relation to the citing of witnesses, agreement of evidence and an increase in the resolution of cases without trial. This will be achieved by focusing the increased use of resources at an earlier stage of each case in order to simplify and better manage cases at a later stage, thereby minimising the impact on victims and witnesses when cases come to trial.

COPFS also welcomes the Abusive Behaviour and Sexual Harm Act 2016 which is not yet in force. In particular, it allows for the aggravation of an offence of abusive behaviour to a partner or ex-partner and creates a new offence of intimate image abuse. However, we anticipate an increase in cases being reported to COPFS as a result of these new offences and this additional casework will require to be managed within our existing resource.

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<sup>2</sup> There were 13,541 special measures applications in 2015 and our estimate for 2016 is that there will be approximately 34,700 applications.

<sup>3</sup> There were 139 requests for a review of the prosecution decision in the first year of the scheme's operation (July 2015 to June 2016).

## ***Changes in Reported Crime***

Since 2010, the profile of crime has changed across Scotland. Whilst the number of overall reports to COPFS has fallen by 15%, the number of domestic abuse and sexual offence reports received has increased significantly and these cases are inherently more complex and contentious and more likely to result in a trial, resulting in lengthier trials taking place more frequently. Detailed information about the changing profile of crime reported to COPFS can be found at (COPFS Fact Sheet 2<sup>4</sup>).

## ***Judicial Decisions***

In 2005 the cases of *Holland v HMA*<sup>5</sup> and *Sinclair v HMA*<sup>6</sup> at the Judicial Committee of the Privy Council required COPFS to make urgent process changes to the system of disclosure of evidence to the defence, which were considerably more onerous for COPFS. Whilst this material is now transmitted to the defence electronically, disclosable material requires to be considered and uploaded onto the electronic website. Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 created a statutory disclosure regime, which again placed additional process requirements on COPFS.

## **COPFS Response to the Changing Landscape (COPFS Fact Sheet 3<sup>7</sup>)**

This altered landscape has had a major impact on how COPFS conducts its business over the last ten years. We have had to change our structures, governance and working practices in order to continue to deliver an effective prosecution service within the resources available. Planning for and adapting to this changing landscape, including collaboration and engagement with key stakeholders, has been continuous throughout this time. We have focused on two key areas:

- **Balancing specialisation and local engagement:** we recognised over fifteen years ago that we could no longer rely on our staff in a local prosecution office to deal effectively with every aspect of our work. We have therefore sought to retain a strong presence at the local courts where our staff prepare and prosecute local summary cases. At the same time, we have adjusted our working practices to focus on areas of specialisation where we recognise that there is a need for our staff to build up expertise and links with stakeholders in particular areas e.g. initial case processing, sexual offences, wildlife and environmental crime, health and safety offences, homicide, counter-terrorism, sudden death investigations. These are all areas of work which are no longer left to the local office to deal with but are investigated and prosecuted by specialist prosecutors. We are confident that the benefits achieved from this approach have been very significant.
- **Investing in our staff and our digital capacity:** we have continued to invest in training our staff, opening a dedicated Prosecution College in Glasgow in

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<sup>4</sup> <http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

<sup>5</sup> 2005 SCCR 417

<sup>6</sup> 2005 SCCR 446

<sup>7</sup> <http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

2007 at a cost of £720,000, continuing to recruit a significant number of trainees per year (22 trainees started their traineeship with us in August 2016) and recruiting staff on a permanent basis as our financial circumstances allow. We have also invested in our digital capacity, giving us an electronic system of disclosure and a full electronic case management system which although more than ten years old is still unrivalled in its ability to share information electronically across the criminal justice system and manage our workload flexibly without being tied to the location of a paper file.

Our aim for the next ten years is to develop a more digital, skilled and engaged workforce and our plans to achieve this focus on the following priorities:

## **1. Structural Changes and Engagement with Staff**

In January 2015 it became clear that the structure of the organisation required further refinement to ensure the specialist approach was maintained and to address issues that our staff had raised in respect of the large geographical units that existed.

In April 2016 the “Shaping the Future” programme delivered a four function model for the organisation. Of particular significance was the introduction of 6 Sherifdom Business Units within the Local Court Function which deals with all Sheriff Summary and Sheriff and Jury business. The introduction of the Local Court Function recognised and addressed both the external and internal perceptions of loss of local identity and local external contact. Throughout the change programme there was extensive face to face consultation with staff and over 1800 lines of feedback from staff about what worked well and what needed improved. Throughout the structural change programme, COPFS engaged with external partners and stakeholders.

Throughout the structural change programme the feedback from our staff emphasised a number of aspects of their working lives which could be improved. As a result we are now developing the “Fair Futures” programme which will implement changes from 2017. The vision of “Fair Futures” is to continue to develop as a high-performing and aspirational organisation in which our people feel valued, supported and lead fulfilling working lives.

The Programme is grouped into four broad, connected work streams: Deploying People, Developing People, People and Performance Improvement, and Wellbeing. The initial focus of the project will be on supporting a number of key tasks, such as reviewing performance management, recruitment processes and the wellbeing of staff, all of which reflect the main priorities which have been highlighted in successive staff surveys and the Shaping the Future consultation in 2015

## **2. Treatment of Victims and Witnesses and VIA Review (COPFS Fact Sheet 4<sup>8</sup>)**

Since 2002, COPFS has provided a system to keep victims informed about their cases. This was launched by COPFS as the Victim Information and Advice (VIA) Service. VIA's aim is to seek to assist victims by providing them, through dedicated staff who also operate as a point of contact, with information about the progress of their case as well as general information about the criminal justice system.

Before the launch of VIA, victims did not receive proactive notification of progress with their case and did not have a dedicated point of contact. While prosecutors were previously able to provide such information, this was not done systematically and consistently.

Since it was launched, our VIA staff have also taken on responsibility for applications for special measures under the Vulnerable Witnesses (Scotland) Act 2004 and the Victims and Witnesses (Scotland) Act 2014. They also now offer information to child victims and victims of crime in cases of domestic abuse, hate crime, sexual crime or where it is likely that a trial will involve a jury. They provide information and advice to nearest relatives in a death investigation and will provide help to make arrangements through the Witness Service (operated by the Scottish Courts and Tribunal Service) for victims to visit the court before giving evidence.

It is sometimes not widely understood, although we try to make it clear to all victims with whom our VIA staff engage, that we are unable to provide them with broader help and support such as that which might be available from Victim Support Scotland or other charitable groups which support victims and witnesses in Scotland. Our VIA staff are trained, however, to help victims make contact with these additional sources of support.

Our VIA staff will also help victims to understand which issues are the responsibility of prosecutors and which are the responsibility of the broader criminal justice system, such as the scheduling of trials in the High Court.

In 2015 we undertook a review of our VIA service, which concluded with a list of 60 recommendations, the implementation of which is underway.

Implementation of the 2014 Act represents the progress which has been made in Scotland to make clear that those affected by crime are at the heart of the Scottish justice system. The law now provides a clear framework for the support and protection of victims and witnesses in Scotland.

## **3. Stakeholder Engagement**

COPFS engages with key partners on a regular basis at both a national and a local level, including the Scottish Government, Police Scotland, Barnardo's, Children 1<sup>st</sup>, Rape Crisis, Scottish Women's Aid, Shakti Women's Aid, Victim

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<sup>8</sup> <http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

Support Scotland, Assist, the Children's Reporter, Safe to Say, LGBT Scotland, ROSHNI, Action Against Stalking, TARA, Migrant Help, SCoJEC, People First, Sense Scotland, Interfaith Scotland, Equality and Human Rights Commission and the Scottish Refugee Council.

COPFS has invited key stakeholders to be a member of an Independent Review Panel (IRP) on domestic abuse and sexual crime, which makes recommendations to improve our working practices. For example, as a result of recommendations from the IRP, VIA staff now receive training on domestic abuse and domestic abuse training course includes the impact that domestic abuse has on children. There have been three IRPs to date and it is anticipated that the next IRP will be scheduled for early 2017.

COPFS chairs an Expert Advisory Group on sexual crime, and attendees include experts from a number of sectors including some of the above-named stakeholders as well as a doctor from the Archway sexual assault referral centre.

The COPFS Equality Advisory Group (EAG) was created in 2003. Its members are external, independent advisers with professional experience of all aspects of equality and diversity. They provide advice and scrutiny for COPFS internal and external activity, serving as a critical friend and providing access to communities who are often otherwise far from official networks.

Internally, the Equality Board, chaired by a Deputy Crown Agent, sets the strategic focus of equality work. Their role is to share good practice around Equality and Diversity at both a local and national level ensuring that the subject matter is embedded into day to day processes and practices. The Board advises on the creation of business plans for local networks and monitors performance against set outcomes/objectives.

COPFS staff from around the country, often with an interest or expertise in a particular area of equality and diversity, are members of our six Sheriffdom Equality Networks (ShENs). These work on a geographical basis and play a vital role in developing links with communities and encouraging staff to help address local issues and promote social responsibility and inclusiveness. The leads of the six ShENs report directly to the Equality Board.

In 2015, COPFS was listed by Stonewall as its 8<sup>th</sup> top employer in its annual list of Top 100 Employers in the UK, making it the top public sector employer in Scotland.

#### **4. Specialist Approach**

As described above, COPFS has been taking an increasingly specialised approach to its workload for some years now, particularly in relation to serious and organised crime and High Court prosecutions. The National Sexual Crimes Unit, established in 2009, has a cadre of Advocate Deputes who specialise in all serious allegations of sexual crime, including child sexual exploitation and human trafficking. In addition to conducting prosecutions, this dedicated team of senior prosecutors direct criminal investigations from the earliest stages, providing

advice and expertise on all aspects of the investigation and preparation of these cases.

The increased reporting of sexual offences in recent years has led to the creation of specialised sexual offence units at Sheriff and Jury and High Court level and since May 2014, a bespoke Victim Strategy has been prepared for all victims in High Court sexual offence cases.

Training in this area of work has been expanded for prosecutors and VIA and now includes courses dedicated to victims and witnesses, interviewing child witnesses, sexual offences (including human trafficking), domestic abuse, stalking, and abuse in institutions. Our Learning and Development Division now has 14 members of staff, including four lawyers, and one of the aims of this division is to continue to improve how we prosecute sexual offences, domestic abuse and stalking.

A Management Development Programme is currently being rolled out to 400 managers in the service and there is also a depute accreditation process to ensure that all new procurator fiscal deputies achieve a consistent and recognisable level of competence.

## **5. Prosecution Policy Review**

COPFS keeps its prosecution policies under review so that they remain appropriate and consistent with the principles set out in our Prosecution Code. We remain satisfied that the present approach to domestic abuse, stalking, sexual offences and hate crime is appropriate and we will accordingly continue to focus on these categories of crime as regards training, stakeholder engagement and wider confidence building throughout the communities of Scotland. We have conducted evidence based reviews, by reference to published data about sentencing outcomes, in other areas of criminality and it is apparent that in some cases, the appropriate practical outcome for the offender, victim and the wider community could be achieved more promptly and effectively by taking a different form of prosecutorial action.

As a result, we are updating some of our policies, both in respect of the forms of prosecutorial action that we take at the outset of a case and the decisions we make during the life of a case.

We will continue to operate a presumption of taking action where harm has been caused, support the reduction of reoffending, take account of the likely sentencing outcome and keep ongoing cases under review to ensure that our decision making remains appropriate.

## **6. Digital work**

Work is underway to develop a public facing Witness Website that allows for the posting of information by COPFS of statement and case progress. It will also allow for the posting of information by witnesses and victims. We are also

expanding the use of SMS and email to alert witnesses and victims about trial dates and the outcome of cases.

Other areas in which we have used digital means to become more efficient include the disclosure website and move towards a full electronic record in summary cases. COPFS is also implementing digital corporate applications to increase operational efficiency. The new applications are being launched on a phased-basis from October 2016.

COPFS is working with the Scottish Courts and Tribunal Service and Police Scotland on the Prisons to Court project, implementing the Video Conference link for Full Committal and Intermediate diet court appearances in a number of courts across the country. We plan to extend this to First Appearance from Custody in 2017-18.

We have also developed an application and technology to support tablet computers in court, avoiding the need for prosecutors to take prepared paper files to court. We are developing plans to roll this out across the organisation.

I hope this information is of assistance to the Justice Committee. Please do not hesitate to contact me if further information would assist.

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