

## Justice Committee

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

#### Written submission from Families Outside

Families Outside is a national independent charity that works on behalf of families affected by imprisonment in Scotland. We do this through a comprehensive national family support service that serves both families and the professionals who work with them, through direct support in person or by telephone; through delivery of training; and through development of policy and practice.

Families Outside is grateful for the opportunity to comment on the Justice Committee's Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS). We do not feel we are in a position to respond to all of the questions in the Call for Evidence but will answer the ones we can and comment more generally about the principles involved. We are happy to elaborate on any of these should the Committee require additional information.

- 1. Please outline your views on the overall efficiency and effectiveness of the COPFS in its core role of considering reports about crime from the police and bringing prosecutions. 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? If so, do those changes also bring risks, in terms of the overall interests of justice or of access to justice (bearing in minds the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc)?*

Our main experience relating to this question is about contacts witnesses receive for court dates. In reminding people of court dates, contact and especially reminders via text or social media tend to be more effective than contact via post or email. The most deprived households may have unstable accommodation and may not have access to the internet,<sup>1</sup> so communication by mobile phone using texts or social media may be the most reliable way of reaching people. However, contact from the COPFS tends to be more traditional and formal, often in language difficult for less literate people to understand. A 'plain English' basic template and method for communication, including timely reminders, may well increase attendance at court.

Reliable attendance at court is critical for an efficient service. Cases can be delayed for months or even years due to non-appearance of witnesses or administrative delays. Witnesses may receive no explanation for these delays, yet the impact of uncertainty and delay can take a toll on the mental and physical health of those involved. Add this

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<sup>1</sup> Davidson, J. (2016) "Households without internet access likely to be deprived in other ways, Carnegie UK study finds." *Holyrood Magazine*. Available at <http://www.holyrood.com/articles/news/households-without-internet-access-likely-be-deprived-other-ways-carnegie-uk-study>

to the cost of travel and transport, especially for people in more remote areas, and the cost of time off work, and the 'knock-on' effects of court delays are considerable. The attached appendix (also submitted separately as a response to the consultation) gives a statement from one of our employees who has lived through this both as a defendant and as a witness, to outline what this experience can be like.

2. *Please outline how well you consider the COPFS works with other stakeholders in the criminal justice system, so as to provide a —joined up and complementary service that helps meet the ends of justice. Other stakeholders might, for instance, include the police, defence lawyers, the courts, the prison service, criminal justice social work, and third party organisations working with victims or offenders.*

Our interest here is the need to include families as much as possible throughout the criminal justice process. One reason we have little to feedback from the families' perspective is that families are so rarely included in discussions with the COPFS. Most of the families we support have little or no contact with the COPFS, as the focus is entirely on the accused. Unless a family member is a witness, someone may go through the entire justice process without the family ever knowing the person has been accused or convicted. An interview conducted for *No One Knows*, as part of its programme of research on offenders with learning difficulties and learning disabilities,<sup>2</sup> told the story of a prisoner who did not know how to reach his mother when he was sent to prison. By the time he received help with this, three weeks after his imprisonment, his mother had assumed he was dead.

Families must be considered as stakeholders in the criminal justice process. Decisions made by the COPFS have an impact beyond the person accused, remanded, or convicted. The COPFS should take into account the potential impact of a prosecution or bail decision on the family left behind. In its 2011 Day of General Discussion, the UN Committee on the Rights of the Child recommended that child impact assessments be conducted for both custodial and community penalties (admittedly sentencing decisions, but the decision to oppose bail would have similar implications) to ensure any such penalty did not have an unduly detrimental effect on children and for children to be offered appropriate support. This is not current practice in Scotland, and the new Criminal Justice (Scotland) Act 2016 only requires information to be collected about children once someone is already in custody.

The Framework for Support to Families Affected by the Criminal Justice System,<sup>3</sup> signed off by all eight Community Justice Authorities and now shared on the Knowledge Hub for the transition to Community Planning Partnerships, highlights the role the COPFS should play in engaging with and supporting families. The Framework states clearly the importance of COPFS engagement with families, as well as the necessity for training of COPFS staff to raise awareness of the impact of their decisions on families. We commend implementation of this Framework at the earliest possible stage.

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<sup>2</sup> See <http://www.prisonreformtrust.org.uk/ProjectsResearch/Learningdisabilitiesanddifficulties>

<sup>3</sup> <http://www.familiesoutside.org.uk/content/uploads/2016/03/Families-Framework-FINAL-July-2015-v3.pdf>

- 3. Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its core role effectively? And is it appropriately —future-proofed— for instance to deal with new technologies available to criminals, changes in the overall profile of crime in 21st century Scotland, or withdrawal from the European Union? If not, what additional capacities does the COPFS need?*

We do not feel we are best placed to respond to this question.

- 4. How well does the COPFS respond to the needs of victims of crimes and to witnesses (especially vulnerable witnesses) in criminal cases and meet its legal obligations towards them?*

Again, the appendix below sets out the personal experience of one of our members of staff in this regard. From what we understand, her experience of unexplained delays and stress is not unusual. Our work at Families Outside is to support children and families affected by imprisonment, but families can be the victims and witnesses as well. This in itself can lead to breakdowns in relationships within families, as well as deeply conflicting emotions and loyalties for individuals. This adds to what is already a very stressful experience and requires sensitivity and full communication from the professionals involved. The feedback we have received is that the COPFS fulfils its legal obligations and processes, but that the delays and frustrations and lack of communication along the way reflects a system lacking in consideration of the impact on individuals as human beings.

- 5. The Inspectorate of Prosecution in Scotland is the independent, statutory inspectorate for the COPFS. What is your awareness of the existence and role of the IPS and of its effectiveness in carrying out that role? How effective has it been in carrying out its role? Does it appear to have the resources it needs?*

We have no prior awareness of the IPS and therefore cannot comment further.

Families Outside appreciates the opportunity to comment on this issue. In sum, we are not aware of the family being considered as a stakeholder in COPFS processes or decisions. This is something we view as an important oversight in the work of this service, especially in view of the guidance agreed in the Framework for Support to Families Affected by the Criminal Justice System. We are happy to provide further information should the Justice Committee find this of use.

Professor Nancy Loucks OBE  
Chief Executive  
Families Outside  
20 October 2016

### Role and purpose of the Crown Office and Procurator Fiscal Service

#### Response to questions to consider

1. I have had direct experience of dealing with the COPFS during my role as a restorative justice worker throughout 2012/2013, covering three different locations. The role of the PF was to read the reports submitted to them from the police and other agencies and if the case met the criteria refer to restorative justice services. Restorative Justice reduces the costs of bringing cases to court and offers the accused the opportunity to avoid criminal proceedings by means of RJ. However, it is very much a post code lottery on whether cases are dealt with by RJ. It depends on accessibility of an RJ service in the area of where the accused/victim live and even if the case meets RJ criteria on whether the PF is forward thinking enough to refer to RJ. Having had discussions with the police in the area where I worked, they often recommended the use of RJ. Although in reality the numbers of cases referred to RJ services are low.

In my own personal experience as a defendant, my criminal case took almost 2 years from my 1<sup>st</sup> interview with the police to disposal following a court case. There appeared to be many delays along the way. I frequently rang my solicitor who checked with COPFS to check progress and was often told they are waiting on certain reports and information. This heightened my anxiety and did have an effect on my mental health. There should be more efficient ways to deal with cases which would speed the processes up. Although my solicitor dealt with most of the issues as efficiently as he could, the delay and administration caused more public money being spent in terms of legal aid. This experience is echoed by many of the accused I work with now in my role as community justice mentor. People are prevented from moving on due to the length of time it is taking to deal with outstanding charges.

Technology should play a big part in speeding up processes. However, despite the advances made in this area, not all agencies have the right systems to be able to send classified confidential information. This often means that reports can take longer to be received and or sent, and creates further delays. Using technology can also bring risks associated with the sending and receiving of classified information. Overall access to reports and the dangers of cybercrime needs to be addressed, to encourage usage.

2. In my view there is room for improvement in the relationship the COPFS has with other stakeholders, specifically the 3<sup>rd</sup> sector. If it is disclosed in a report that the accused or victim is working with a 3<sup>rd</sup> sector agency then they should be contacted to gain further information for submission in the case.

In the most recent case I was involved in, (which also took almost 2 years to get be heard), I was a witness to the event. However, having given statements to the police, Sodexo and the SPS, and on each occasion informed them of my role with Families Outside, on no occasion were my employees contacted. So much more information could have been given about my role when the alleged offence was committed and the

relationships between the agencies involved with this particular case. Trying to contact COPFS to gain more information after having been cited was extremely difficult. I took several attempts to speak to someone as the phone system cannot cope with the volume of calls it receives. However, no one was able to answer my query concerning my issue of being called as a witness for the prosecution when I believed I should be there for the defence. If COPFS had contacted my employer, a 3<sup>rd</sup> sector agency working within the field of criminal justice, the PF could have gained so much more information.

3. It would save time and money if instead of bringing those currently in custody from prison to a court which could be some distance away, they are linked up via video-link/skype etc., especially if only in court for a pleading or intermediate diet. This type of technology is currently used but not on a regular basis. However, there would need to be time and money invested into the COPFS and also the SPS for this to become a norm. As with all technologies there is a need for a robust system to prevent cybercrime. Crime is changing and COPFS need to be kept up to date with systems in place to prevent such problems.

In view of the paperwork I have received from the COPFS for various cases, there appears to be a general overuse of paperwork, most of which is unnecessary.

4. Accessibility to information about proceedings is lacking and difficult to obtain. What information that is given is not helpful. For example;

Recently I was a witness to an alleged crime (I did not count myself as a victim). The incident took place in 5 November 2014 and was finally dismissed (case not called), in September 2016. (Almost 2 years from the incident date).

When I was cited;

- The paperwork went to the prison where I work on an ad hoc basis, despite giving my home address for correspondence. This meant there was a several week delay before I received the paperwork and citation as no one from the prison was able to pass the paperwork on to me until I was physically present at the prison. This happened several times throughout the proceedings.
- I had no idea what incident I had been cited for, and no idea what the alleged offender had been charged with. The information on the citation is very limited. When I rang the COPFS, (helpline not direct to the office you require), it took several attempts to get to speak to someone, phone lines are permanently busy or you are asked to leave a message, which is not helpful when you are working and have limited time available to speak to someone.
- After managing to speak to I believe a clerk at the COPFS, all I was given is the section he was charged under, which to a lay person means nothing. Fortunately I was able to work out what offence it was from the internet.
- I was cited three times, the 1<sup>st</sup> two occasions, involved waiting in a very busy witness waiting room all morning until I was finally told the case would not be heard. This was due to on the 1<sup>st</sup> hearing the accused not showing up for his

case and on the 2<sup>nd</sup> hearing, there was not enough time due to previous cases over running. On the 3<sup>rd</sup> attempt, I was called to speak to the prosecution lawyer who wanted to ask my opinion on whether the accused's case should go ahead, as the statement I had previously given did not merit a prosecution. I went over the events of the date of the alleged offence again, as the lawyer decided to recommend the case be dropped.

- On a personal level, having to attend court three times was stressful. The matter could have been dealt with better in my opinion and saved a lot of time (mostly mine) and money.

I feel putting lots of witnesses together in a large stuffy room, (most courts are the same), it not good for witnesses, especially vulnerable ones. Whilst due care and consideration is given to witnesses who are victims of serious crimes (rape, domestic abuse, violent assaults etc.), no thought is given to witnesses who are feeling especially agitated or nervous and would like time and space alone.

5. I have never heard of the Inspectorate of Prosecution. I might have received information about this when I was cited, but do not remember. There are no prominent notices within the court about this.