

## **Justice Committee**

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

#### **Written submission from Glasgow Bar Association**

##### **Introduction**

The Glasgow Bar Association (“the GBA”) was formed in 1959. The objects of the Association, as contained in its constitution, include the promotion of access to legal services and access to justice and to consider and, if necessary, formulate proposals and initiate action for law reform and to consider and monitor proposals made by other bodies for law reform. The GBA also offers legal education programmes and sponsors and supports legal education and debate at Scotland’s universities.

Today the GBA remains a strong, independent body. Its current membership level now exceeds four hundred, by far the largest Bar Association in the country. The GBA thanks the Justice Committee for the opportunity to make submissions in respect of this Inquiry and would encourage the Justice Committee to continue to seek its views on all legislative matters and issues impacting upon the criminal and civil justice system.

This response is prepared by the committee of the GBA having sought the views of our members who work daily in Glasgow Sheriff Court. Our response focuses primarily upon the effectiveness and efficiency of the Crown Office and Procurator Fiscal Service (“COPFS”) and how it works with defence solicitors in Glasgow, being major stakeholders in the criminal justice system.

We wish to acknowledge that our experience in Glasgow is that the Procurators Fiscal are working extremely hard, under significant pressure and that despite this, there is an excellent working relationship between Procurators Fiscal and the defence bar.

Glasgow Sheriff Court is reputed to be the busiest court in Europe dealing with the largest volume of criminal cases in Scotland, presenting particular challenges for COPFS but also meaning that any issues of inefficiency are particularly acute in Glasgow.

It may be useful to give an overview of the criminal courts in daily use in Glasgow Sheriff Court:

Most days there are five sheriff and jury courts running and one to two solemn procedural courts depending on the day of the week. Each day there are four “standard” summary trial courts and one to two domestic abuse summary trial courts, again depending on the day of the week. Three justice of the peace summary trial courts run each day and a sheriff diet court and a justice of the peace diet court on one day each week. Intermediate diet courts for sheriff cases and for justice of the peace cases run on selected days of the week and lastly custody courts run each day in courts 1a, 2, 3 and 4.

Whilst this undoubtedly is an extremely busy programme of business it must be borne in mind that amongst the measures introduced as a result of Summary Justice Reform in 2008 was an expansion of alternatives to prosecution and the establishment of justice of the peace courts (administered by the Scottish Courts Service) in place of district courts (administered by local authorities). In Glasgow this latter measure led to the closure of the old district court complex. Both measures have resulted in a reduction in the number of summary courts. Previously a diet court and an intermediate diet court for Glasgow Sheriff Court cases would sit five days per week together with six summary trial courts and a full programme of business in the old district court building.

### **Question 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 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 mind the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc.)?*

The overriding concern raised by our members is the huge difficulty encountered in seeking to contact procurators fiscal (referred to as “deputes”) to discuss cases. Such discussion could often lead to resolution. It is fair to say that deputes dealing with summary prosecutions are “firefighting” and it is widely acknowledged that unless you are telephoning to discuss a case which is calling within days, then it is extremely unlikely that a depute will be available to discuss the case.

This situation is compounded by the often insurmountable difficulties defence solicitors encounter in trying to actually speak to a depute. The situation in Glasgow is that a defence solicitor requires to phone a call centre dialling an expensive business rate 0844 number to ask to speak to a procurator fiscal. The reality is that it is not unusual to be told there are no deputes available to discuss the case or indeed that there is no-one in that department at all who can answer your call. The call centre operator may be able to identify the depute who has been assigned the particular case but is specifically forbidden from releasing the direct dial number of that depute. This inevitably means that the solicitor makes repeated and costly telephone calls in an attempt to discuss the case. Again we wish to stress that procurators fiscal themselves, when contact is achieved, either in person or by phone have no difficulty whatsoever in releasing their direct dial numbers. We are extremely puzzled by the prohibition on releasing direct dial numbers: it creates a real impediment to resolving cases and to facilitating meaningful discussion about outstanding issues prior to court.

We wish to stress that there is a will locally to try to address these communication problems and there has been ongoing discussion for over five years between the Crown and the committee of the GBA to try to resolve these issues. In particular we have long been asking for direct dial numbers to be circulated and for a standard

rate number to be introduced. Defence solicitors report spending inordinate and costly amounts of time on the phone attempting to reach deutes. For example, following discussion between the COPFS in Glasgow and the GBA, a plea hotline has been initiated on a number of occasions and whilst this initiative is still ongoing it is faltering: solicitors report leaving messages asking to resolve cases but these calls are not returned. It appears to solicitors that this hotline is often not manned or that calls are returned only in respect of cases calling within a matter of days, again an indicator that resources are stretched. Whilst some members have reported improvements in communication through the use of the Criminal Justice Secure email (“CJSM”) this tends to be in connection with solemn cases.

The difficulties in communication in respect of summary cases can be contrasted with the significant improvements achieved in solemn cases following work carried out by COPFS in Glasgow to divide solemn cases into specific crime areas with named deutes for example “sexual offences”, “domestic abuse” and, drugs cases and crucially to make available to defence agents a comprehensive list of contact numbers for the specific deutes assigned to each of these different sections. Practice Note number 3 of 2015 issued by the then Lord Justice Clerk, Lord Carloway (now the Lord Justice General) issued a statement of the best practice expected in solemn criminal business in the Sheriff Court. This provided that the presiding sheriff will expect the Crown and the defence to have entered into timeous and effective communication before the First Diet and to be in a position to address the sheriff on the matters outlined in what is known as the Joint Written Record. This is in anticipation of the expected “best practice” becoming a statutory requirement when the relevant provisions of the Criminal Justice (Scotland Act) 2016 are implemented. At present in Glasgow the Crown and the defence (despite very significant concerns about the limited legal aid payment available for such work) are working to secure such effective communication and where appropriate resolution takes place. The provision of a list of telephone numbers together with an initial letter to the agent detailing the responsible deute and the assigned precognoser greatly assists. The GBA has been invited by the judiciary in Glasgow to meet with them in the coming weeks to discuss the operation of the solemn procedural court and the impact of Practice Note number 3. We also wish to note that in advance of the introduction of Practice Note number 3, the COPFS in Glasgow assisted the GBA by addressing our 2015 Annual General Meeting in respect of the new organisation and contact points for solemn business.

There are significant problems with correspondence sent to the Procurator Fiscal’s office in Glasgow in respect of summary cases. Agents consistently report sending letters to which they receive no response. Deutes and defence agents then find themselves attempting to resolve issues at court which could have been resolved prior to the calling of the case. This leads to continuations and contributes to the “churn” of cases. It appears that the issue of responding to agent’s letters is one which has not been resolved by the use of technology. Deutes are often called upon by the presiding sheriff to explain why a letter from an agent does not appear to have reached a specific case file. The explanation given by deutes is often that such letters are “scanned” in some sort of central scanner which then denotes that the letter has been received but does not mean that the letter has been “married” with the particular file, leaving the deute in court unaware of the content of the letter.

Again it is worthy of note that each summary trial court in Glasgow has often ten to twelve cases calling for trial and amongst those there can often be complex child witness trials, requiring special measures, “benefits fraud” cases with voluminous disclosure or indeed prosecutions under the Sexual Offences Act 2009. All such cases are likely to generate lengthy and complicated preparation for trial for both the Crown and defence and the difficulties in pre-trial communication in cases such as these can lead to delays impacting upon witnesses and accused persons. Against this backdrop of a deputed “standard summary court” often containing difficult and complex cases members, in the past, may have expected that more straightforward cases could benefit from early plea adjustment. There has however been a perception in recent times that deputes have significantly less discretion than was previously the case. The Prosecution Policy and Guidance Book of Regulations recognises the legitimacy of plea adjustment as a proper exercise of prosecutorial discretion and indeed the procurator fiscal remains under a duty throughout the lifetime of a case to consider, at each stage of the case, the action which best serves the public interest in the effective administration of justice. Whilst we recognise that deputes also must have regard to any departmental protocols it is invariably the case that the person best placed to make a decision in respect of what, in the circumstances of a particular case is an acceptable and reasonable plea, is the depute in court. Whilst any observations we can make would be purely anecdotal the perception is that this may be due to the fact that, particularly in dealing with summary business, many of the deputes are junior fiscals many of whom are engaged by the Crown on fixed term contracts, perhaps leading to an understandable reluctance to make any significant decisions in terms of a plea being proposed to them, through anxiety that their decision will be criticised. This too can lead to continuations and delays in cases as often members’ report that deputes will tell them they will be obliged to seek the advice of a more senior colleague before accepting a plea.

Whilst we are aware that innovations such as the use of electronic devices in court by deputes and the more wide ranging use of technology envisaged by the Evidence and Procedure Review ( such as pre-recorded witness statements ) are being developed we have to observe that regardless of the increased use of CJSM, the scanning of letters to virtual files and the use of direct dial numbers, it appears that there are just not enough people on the “ground” in court and in the office in terms of deputes and support staff to cover the work. We are concerned that whilst the changes to the methods of obtaining and presenting witness evidence continue to be developed and increasing demands placed upon both the crown and the similarly stretched defence bar that more basic problems, as described above, persist.

## **Question 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 complimentary service that helps meets 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*

The GBA and its members enjoy a positive relationship with other stakeholders in the criminal justice system in Glasgow. As previously noted we have a good relationship with the crown characterised by ongoing dialogue to try to resolve difficulties. Similarly there is a positive working relationship with, for example, the Scottish Courts Service and with members of criminal justice social work and such stakeholders are always receptive to consulting with the defence bar as and when issues arise. For example the COPFS, Scottish Court Service and the GBA have worked together to introduce “custody lists” which are made available in the solicitors common room detailing when a case is “marked”, when the papers are in court and what the Crown’s position in respect of any bail application will be. However we have long been concerned that there is no representation on behalf of defence solicitors on Criminal Justice Boards, and specifically on the Justice Board for the Sheriffdom of Glasgow and Strathkelvin. As very significant changes to the criminal justice system are being planned by the Scottish Courts Service Evidence and Procedure Review, including the development of a case management system in summary and solemn cases, defence solicitors could become party to such case management systems. We consider that joint working with other stakeholders could be enhanced by the formal inclusion of defence solicitors in Criminal Justice Boards.

### **Question 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 capabilities does the COPFS need?*

As has been reported in 2014 to the Justice Committee by the Procurator Fiscals Society section of the FDA (trade union) there has been an increase in the number of serious cases reported to the COPFS (cases to be prosecuted at petition level) and an increased number of which are complex sexual offences.

Whilst it is obviously right that such serious High Court and Sheriff and Jury Proceedings are prepared and prosecuted thoroughly we are concerned that the “standard” summary cases are also accorded appropriate attention. The public undoubtedly would expect that serial instances of drugs, public order, dishonesty and violent offences are properly prosecuted by well-resourced and properly supported deputies. Whilst the very significant impact upon the public of High Court offences cannot be overstated it is the case that many more members of the public will be affected by such offences generally prosecuted at summary level.

### **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 meets its legal obligations towards them*

In recent years the COPFS has made increasing use of the Vulnerable Witness provisions within the Criminal Procedure Scotland Act 1995: using screens, supporters and video links to assist in the taking of evidence from child and

vulnerable witnesses. It is now a routine question, for example, in a domestic abuse custody court for the depute to ask the defence solicitor if evidence of identification can be agreed. The answer to this is invariably yes, which then allows the witness to give their evidence without identification being at issue. Similarly when evidence is not agreed or, where it is considered appropriate, Video Identification Parade Electronic Recording (“Viper”) identification parades are held again designed to minimise the impact upon witnesses from having to make a “dock” identification in court.

It is likely that if the recommendations of the Scottish Courts Evidence and Procedure Review are implemented this will significantly change the landscape for the taking of evidence in criminal trial.

We would however wish to comment that in our in experience of hearing from witnesses and indeed accused persons the biggest source of frustration and anxiety is delays in the conclusion of trials and the lengthy waiting at court. To reiterate a common theme in this submission - it is the lack of resources within the COPFS and in court accommodation for “standard” summary trials which is an ongoing concern.

#### **Question 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? Does it appear to have the resources it needs*

We are aware that the Lord Advocate appoints an officer known as Her Majesty’s Chief Inspector of Prosecution in Scotland and that such an Inspector is tasked with securing the inspection of the COPFS and to submit a report on any particular matter in connection with the operation of the Service which the Lord Advocate refers to the Inspector. Our ability to comment upon this question is very limited as it does not appear that there is any real awareness amongst our members of the work of the Inspectorate of Prosecution in Scotland.

Glasgow Bar Association Committee  
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