

## **Justice Committee**

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

#### **Written submission from Peter Low**

Response to question 2: COPFS - working relationship with other stakeholders in the criminal justice system.

Following the appointment in 2009 of a Judicial Factor to the former solicitors' firm of Lyons Laing I discovered that interim fees had been taken from the executry client account for which I was responsible. The Law Society's subsequent investigation revealed that the client file recorded that I met with the solicitor on five occasions when we in fact met twice. For a claim for compensation to succeed the Scottish Solicitors' Guarantee Fund has to reach the inevitable conclusion that the loss was a consequence of solicitor dishonesty. The claim was met in full being the difference between the total of interim fees and taxation as amended for the meetings. The Law Society successfully prosecuted the partners before a Scottish Solicitors' Discipline Tribunal in 2015. The SSDT report is an appalling catalogue of criminal dishonesty.

The circumstances of the taking of interim fees, but not the meetings, formed part of the Law Society's prosecution and this is acknowledged by the Crown Office. The Law Society accepted the opinion of the Scottish Legal Complaints Commission that on the basis of probability the client file was falsified as regards the meetings. The Guarantee Fund in accepting the claim in full recognises dishonesty at the criminal standard of proof. The Crown Office, however, take the view that there is insufficient evidence to prosecute and refused to instruct the police to undertake a proper investigation. I recognise that the decision whether or not to prosecute rests with the Procurator Fiscal, however my objection is the refusal to recognise that there is corroboratory, circumstantial and similar fact evidence in relation to the meetings and not least that the solicitor, who was also my co-executor, admits to a general practice of dishonesty within a contractual relationship.

The police advised me that there is a protocol whereby the onus is on the Law Society to report allegations or findings of criminal activity against solicitors. If the Law Society does not report then the Crown Office does not act. From my perspective this protocol interferes with the client's right to pursue justice and I am of the view that the Crown Office should impartially and transparently consider and investigate any allegation of fraud from whatever source. To do otherwise interferes with the role of the courts and damages the reputation of the wider justice system and the public confidence in a level playing field. As it stands there is a double standard applied to allegations of fraud within and without the legal profession.

I am happy to expand on the background if that would assist the Committee's deliberations.

Peter Low  
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