

## Justice Committee

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

#### Written submission from the Office of Rail and Road

##### Context

The Office of Rail and Road (ORR) is the independent safety and economic regulator for Britain's railways and the independent monitor of Highways England. Our role is to ensure the network operates safely, reliably and provides value for taxpayers and customers.

We are the enforcing authority under Health and safety law for Britain's main line railway, light rail systems, trams and heritage railways.

In England and Wales we instigate legal proceedings ourselves through our appointed inspectors of railways.

In Scotland, we report potential serious health and safety breaches to the Crown Office and Procurator Fiscal Service (COPFS) for them to consider and progress if appropriate.

##### Submission

We are pleased to be given this opportunity to give evidence to this inquiry. Our submission is limited to the questions of:

- *The effectiveness and efficiency of the COPFS, and how well it works with other stakeholders in the criminal justice system; and*
- *Whether the COPFS has the resources and skillsets it needs to carry out its core role;*

In formulating this submission, we have drawn on our experience of handling cases through the justice system in England and Wales as a comparator for our experiences in Scotland.

##### Efficiency

Our primary observation relates to the time taken from any potential prosecution entering the justice system through to conclusion in the courts.

It is noticeable that cases take significantly longer to conclusion in Scotland than is normally the position in England and Wales.

In recent years, it has taken an average of 35 months from reporting to the COPFS to receiving the final judgement. However we note that this is a small sample size and not a statistically significant figure.

In England and Wales, the comparable period is under 12 months.

We have not investigated the reasons for this disparity and acknowledge that it may reflect more on the court processes than the activity performed by the COPFS.

Nevertheless, regardless of the cause(s), delay in delivering justice can have a detrimental impact on victims of crime, witnesses and defendants.

### **Effectiveness**

Using the final outcome of the case as a measure of effectiveness, we find no significant variance between cases heard in Scotland and the rest of Britain. As many of our defendants are national bodies that operate both in Scotland and elsewhere in Britain, this is a positive finding. However, with the introduction of the new Sentencing Guidelines for health and safety offences in England and Wales, we anticipate disparity in the level of fines between Scotland and elsewhere. We note that this matter is beyond the scope of this inquiry.

### **Resources and Skill Sets**

We suspect that much of the delay is due to pressure on resources at the COPFS. We do sometimes find it difficult to make contact with the nominated Fiscal Deputy for a particular case. Nevertheless, we consider that we have good relationships with the service.

Health and safety cases can be complex in their nature, and railway cases in particular are often based on highly technical issues. It can be very difficult for the prosecutor to understand the nuances of some of these cases. As prosecutions for offences on the railway seldom amount to more than two per annum in Scotland, we appreciate the difficulties for the PF to build a level of understanding.

One suggestion would be for a particular officer to be the nominated person to handle occupational health and safety reports from The Office of Rail and Road.

We have no evidence to offer on other aspects of this inquiry.

The Office of Rail and Road  
13 October 2016