

Justice Committee

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

Written submission from Scottish Women's Aid

Introduction

Scottish Women's Aid ("SWA") is Scotland's national domestic abuse agency.

We play a vital role in campaigning and lobbying for effective responses to domestic abuse and provide advice, information, training and publications to our 37 member groups and to a wide variety of stakeholders. Our members are local Women's Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

At the national level, we operate the National Domestic Abuse and Forced Marriage Helpline and work with the police, courts, prosecution, Scottish and Westminster Governments and other partners to end domestic abuse.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need and an appropriate response from the civil and criminal justice systems.

SWA welcomes the opportunity to comment on the important matters raised by this consultation and to voice our support for a system of prosecution that is fully "domestic abuse competent" and supports women, children and young people to fully participate.

Strategic direction of COPFS in relation to domestic abuse

SWA considers that the strategic approach to domestic abuse taken by the Crown Office and Procurator Fiscal Service ("COPFS") is positive, progressive and follows the blueprint of international instruments detailing affirmative approaches by State parties and agencies toward addressing violence against women.¹

We very much support the ongoing and considerable reforms in COPFS policy that demonstrate an organisational understanding of the causes, effects and impact of domestic abuse on women, children and young people. This process began through the commitment championed by Dame Elish Angiolini QC during her role as Solicitor General, and then as Lord Advocate, and has been strengthened by successive

¹ **Council of Europe Convention on preventing and combating violence against women and domestic violence; Council of Europe 2011**

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>

Convention on the Elimination of all Forms of Discrimination Against Women

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

UN Convention on the Rights of the Child

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Lords Advocate and Solicitors General as well as the Crown Agent and other COPFS strategic managers.

Policy developments such as the Joint Protocol on the investigation and prosecution of domestic abuse, the appointment of their National Procurator Fiscal for Domestic Abuse and training for COPFS staff demonstrate a high-level of organisational commitment to the prosecution of domestic abuse; senior staff at COPFS have worked closely and collaboratively with SWA to improve individual and organisational understanding of the issues.

Implementation of policy

However, SWA are not seeing this strategic approach reflected on the ground in the day-to-day response from COPFS to women, children and young people experiencing domestic abuse.

We applaud moves by COPFS to reorganise in order to protect frontline prosecution services, but what seems to be lacking is adequate infrastructure both to support change and implementation of new policies and to sustain that improvement once achieved.

Specific barriers for women, children and young people experiencing domestic abuse

Policy reform within the criminal justice system, particularly through the Evidence and Procedure Review is focussing on allowing victims and witnesses, and thus women and children, to engage positively with the criminal justice system and give their best evidence.

To progress and embrace this agenda, the COPFS must be able to

- make consistent and effective assessments of police reports of domestic abuse- related offending, including evidential issues, to address any matters likely to hinder or delay prosecution, where appropriate
- Routinely provide, or facilitate access to, information, support, advocacy and protection, particularly in line with statutory obligations under the Victims and Witnesses (Scotland) Act 2014.

It is therefore vital that both the above mentioned policy reform and COPFS strategic commitment is translated into informed and positive practice responses to support women and children engaging with the COPFS at a local level.

To this end, examples of good practices from COPFS that would benefit women and children if applied consistently are

- Routine communication and engagement with women around, firstly, bail conditions, any changes to these and the release of the perpetrator; also, on the process before the trial, particularly to dispel myths and misconceptions around the role of the Crown and the mechanics of the trial. It is important that women feel “prepared” and know what to expect and when.

- Timely and clear communication with victims and witnesses on decisions not to prosecute; on whether a case is or is not proceeding to trial; on outcomes of trials and sentencing disposals.
- Prosecutors meeting victims and witnesses and prosecutors being given adequate time to fully acquaint themselves with the case before meeting the victim and attending the trial diet.
- Appropriate, timely and effective assessment of women and children's support and safety needs throughout the process so that they are generally informed around giving evidence, including the use of special measures, and are made to "feel safe" before, during and after giving evidence
- Prosecutors intervening to prevent inappropriate, aggressive and demeaning cross examination by the defence.
- Continuity of VIA and prosecution staff to build trust and confidence between them and victims and witnesses
- Certainty in terms of trial dates. "Floating trial dates" and "churn" in relation to postponement of trials and the eventual commencement of the trial was also cited as a source of concern and frustration.

We are aware that addressing women's views and concerns around "*not having a greater role in the proceedings*" and that the prosecutor should be "*in their corner*", lies outwith the role of the COPFS. Similarly, issues with the quality and nature of physical special measures available in court and the setting of court dates may also be beyond their control. It is, at times, difficult to identify where responsibility lies for these arrangements. This highlights the importance of "joined-up" working and communication between COPFS, Police Scotland and the Court Service as well as local advocacy and support services such as Women's Aid groups. Joint working takes time, a resource that appears to be in very short supply.

Additional concerns around pressure on COPFS' role

SWA is also very much aware of the external pressures and public criticism levelled at the COPFS service from those who feel that the COPFS is no longer maintaining a "robust independence" in terms of their engagement with victims and witnesses and that somehow "*the balance has gone wrong in the system* between the "*needs and wishes*" of victims of crime and the independent role of the prosecution.

The hallmark of a democratic, representative and fair criminal justice system is one that protects its most vulnerable, be they accused, complainers or witnesses. It is just and proper that in the exercise of their prosecutorial duty, the COPFS' role encompasses not only its human rights obligations but also those imposed upon both them and the State by the EU Directive on the rights of victims in criminal proceedings, intended to ensure participation of victims and witnesses, and which is incorporated in Scots law via the victims and witnesses legislation referred to above.

It is crucial for the proper execution of the COPFS role, the preparation of their case and the presentation of that case before the court that prosecutors meet victims and witnesses, assess their needs in terms of providing evidence and ensure that they are supported to do so. This does not conflict with COPFS' independence as the impartial Crown prosecutor acting in the public interest. Indeed, it is very much in the

public interest that the participation of victims and witnesses in the criminal justice process is supported, respected, valued and encouraged.

Women, children and young people have, for too long, been essentially re-victimised and devalued in their interaction with the criminal justice system and its agencies. The COPFS has carried out wholesale reform in its policy and practice response to violence against women and it is vital that it is properly resourced to allow it to turn admirable policy into effective, consistent and accountable practice.

Conclusion

In summary, a properly resourced COPFS service is necessary to make effective the transformation from domestic abuse strategic policy to every-day practice. Within this, the benefits of a Scotland-wide “academy” approach to training of COPFS staff, prosecution and VIA would support the embedding of the national strategy at local level.

Scottish Women's Aid
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