

Justice Committee

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

Written submission from Sacro

Introduction

Sacro has been asked to contribute to the consultation on the role and purpose of The Crown Office and Procurator Fiscal Service. Our response below provides specific examples to back up our views. We have given particular feedback around issues in relation to domestic abuse, restorative justice, diversion from prosecution, prosecution of young people and honour based violence.

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).

Domestic abuse

Domestic abuse is a complex and multi-faceted issue, and the solutions are not always simple. In our experience of supporting victims of domestic abuse we feel that there are improvements that could be made to the Joint Protocol on Domestic Abuse between the COPFS and Police Scotland to ensure that the interests of victims of domestic abuse can be met. At times it can appear that pro-arrest and presumption in favour of prosecution requirements within the joint protocol is so dominant that it diminishes the ability and autonomy of individual prosecutors to make a judgment on the best disposal for individual cases, based on individual circumstances. Increased discretion is imperative to allow individual PFs to make decisions that are relevant, dynamic and responsive to the best interests of those affected. This may include diversion of some perpetrators of domestic abuse to group programmes for low risk cases.

Sacro was involved in running a pilot project in two areas, for perpetrators of domestic abuse. One barrier which we experienced was speedy access to individuals while still in custody and prior to a PF liberation. The sooner in which engagement is made, the better the outcomes are likely to be in terms of future reoffending in a similar manner.

Diversion from Prosecution

In general the targets associated with Diversion from Prosecution (DfP), where a decision is reached and a referral made within fourteen days is consistently achieved. However there can on occasions be a lack of knowledge of what DfP

programmes are available locally. It is acknowledged that COPFS previously took positive steps to standardise awareness by surveying local authorities, although it is not known how widely spread this engagement was. Sacro staff report that this has appeared to miss some geographical areas and as a result DfP opportunities have not always been consistently offered locally.

This is aligned to the perception that there is more of a focus on process and criteria rather than a person-centred approach which would be more consistent with “Whole Systems” and with partner agencies across Police, social work and third sector. It is noticeable in some areas that inconsistency can result in an increase in FWOs, fines and warnings and decreased use of diversion services, in particular restorative justice for young people, aged 16-18.

It is also worthy of note that over the past 12 months, Sacro, although contracted as the service provider in certain areas, has experienced a significant reduction in referrals for restorative diversion. A significant number of cases for this age group have been referred to Criminal Justice Social Work for consideration of alternatives.

Whilst it may have been the intention that Criminal Justice Social Work would take responsibility for identifying suitable RJ diversionary opportunities this has not happened in a manner that is efficient and effective for all partners.

It is the view of staff that this reduction in referrals has coincided over time with the move from local case management to the introduction of the COPFS centralised Initial Case Processing Teams (ICPT). It is believed that in this transition local knowledge has been diminished and local collaborative working has become restricted. Where a large number of PFs are marking papers, it is difficult to know if they are fully conversant with local services.

Prosecution of Young People

Communication between Sacro and COPFS has always been positive and constructive, but noticeably increasingly limited on a local level since the introduction of Initial Case Processing Teams. Prior to restructure of COPFS, local Sacro services providing Court Support and Social Work were provided with a case list or verbal updates from the local Procurator Fiscal Depute once cases had been marked. This is not so readily available post restructure.

As previously highlighted there could be more of an emphasis on diversion as an alternative from prosecution. There is a risk that a lack of consistency will undermine the positive developments gained through the Whole Systems Approach. The loss of local direct contact has impacted on a person centred approach and positive outcomes for young people.

Suggested solutions include the creation of a Service Level Agreement to promote information sharing and improved awareness by all stakeholders of the organisational structures of partner agencies, including identifying developed routes for more effective communication.

IT Provision

A technical capability to immediately provide and share court disposals amongst partners electronically would greatly increase the efficiency of services such as Community Payback Orders (CPO) where the ability to identify referred parties and promptly engage with them is key. At present the time taken to garner this information distracts valuable resource from front line delivery.

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.

Domestic abuse

COPFS has shown a commitment to including stakeholders in service improvement. This is evident in the Domestic Abuse Independent Panel Review Group, meeting twice a year to review how real cases have been handled in relation to domestic and sexual abuse. This evidences a commitment to accountability and continuous improvement of working practices, through the involvement of stakeholders.

The appointment of a specialist prosecutor for domestic abuse in Scotland has also bolstered stakeholder engagement across the criminal justice system.

Stakeholder Engagement

The move by COPFS to Initial Case Processing Teams has at times impacted on local knowledge and affected the benefits of meaningful personal professional relationships. It is the belief of those directly involved in service delivery that communication could be improved between partners and as a consequence opportunities are being missed to divert offenders from the criminal justice process.

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?

Honour Based Violence

In supporting victims of HBV insight into the specific culture/religion to which victims subscribe is essential. This is instrumental in understanding family/community structures, as well as particular risks present in individual cases, to ensure parties concerned are supported appropriately.

This in-depth knowledge is largely confined to smaller organisations, teams (including teams within Police Scotland) and Service providers (Sacro) with a specialised interest in supporting communities affected by these issues. Awareness by statutory services remains limited, Sacro, through Bright Choices has offered

training and consultancy to the Judicial Institute for Scotland and the Scottish Courts Service on rulings which involve elements of Honour Based Violence and Domestic Abuse with a potential 'honour' element or motivation. There is underreporting of honour based violence to the police due to fear or prejudice, resulting in very few prosecutions sought in Scotland.

A court ruling on 3 March 2015, case of AS, for whom a Forced Marriage Protection Order [FMPO] was sought by the Police and Social Services provides a helpful case study. Numerous Risk Factors were present including the family's and extended family's tradition of arranged marriages, refusing these arrangements lead to emotional abuse and blackmail in several cases; the unexpected engagement/marriage of family members to other family members/friends during holidays to their home country; the arranged marriage of one of the protected person's siblings who had mental health issues and learning disabilities, rendering legally incapable of consenting to a marriage, among others. For a full report on the ruling please see:

<http://www.scotcourts.gov.uk/search-judgments/judgment?id=87a9cca6-8980-69d2-b500-ff0000d74aa7>

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?

Domestic Abuse

In relation to supporting victims of domestic abuse, COPFS has always been receptive of reports from domestic abuse services in the Third Sector. This includes reports at sentencing and any requests for a sentence to include a criminal non-harassment order. The Victim Information and Advice (VIA) service is effective in ensuring that these reports are progressed to the Procurators Fiscal.

Restorative Justice

There is an opportunity for the COPFS to better respond to the needs of victims in RJ/Conflict resolution services through consultation with the victim prior to making a decision on whether to prosecute, particularly in summary cases. Due consideration could be given in appropriate cases to directing the police and other reporting agencies to include in case reporting a section asking if the victim would be willing to undergo an RJ process and/or accept reparation in lieu of prosecution in court (financial, task based, offender agreeing to accept help to change the behaviour and address other influencing factors etc.). This is not currently standard practice and if included would reduce the caseloads and volume of work for PF's as well as reduce the number of offenders and witnesses required to attend court.

It is the view of Sacro that there are instances where it would better serve the public interest by referring offenders to bespoke services to address the cause of the behaviour and meet specific needs in tandem with a restorative justice process where a victim is involved and is supportive of the process.

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?

Those involved in overseeing the operational delivery of Sacro front line services are not engaged with the role of the Inspectorate of Prosecution in Scotland.

Sacro
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