The wording has been slightly modified from an earlier posted draft at the request of the submitter so as to protect anonymity

Justice Committee

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

Written submission – anonymous 2

I am a procurator fiscal depute. I have been in COPFS for a number of years. I have extensive court experience, particularly sheriff and jury cases. I am presently based in a sheriff and jury unit. I am a member of the FDA.

I watched the proceedings 15 November 2016 on SPTV following a general email from FDA secretary Fiona Eadie.

I am writing to you now because I have grave concerns that the issue of cases proceeding to trial without there being sufficient evidence was not fully explored or properly addressed.

If I can only refer to sheriff and jury proceedings in my unit at present, I accept that no depute would knowingly mark a case for proceedings where there is clearly insufficient evidence. However, all cases are initially marked on the basis of a standard Police report.

Cases marked for petition proceedings, where the accused will be committed for further examination, allowed bail and eventually indicted for a sheriff and jury trial, only require one source of evidence at initial marking stage.

If the accused is fully committed for trial and remanded in custody 2 sources of evidence are required for at least one charge on the petition. Following indictment each case has a procedural hearing known as a1st diet 4 weeks before the trial. The purposes of the 1st diet is for the Crown and the defence to advise the court if they are ready to proceed to trial

Between initial case marking and the trial difficulties then arise because the only time a case, along with all its supporting evidence of full statements, CCTV, forensic evidence, labels and productions will be fully read and considered by a legally qualified member of staff, is by the trial depute the day before the trial is to commence, which is usually shortly before its statutory time bar.

To explain, after the accused's initial appearance in court, the case is allocated with a briefing note by a depute to a case preparer, who is not legally qualified. The case preparer then gathers in the evidence and prepares a legal analysis. The case is then reported to Crown Counsel within the COPFS target of 8 months (if a bail case or before 80 days if a custody case). Because of volume of work the cases are often allocated late so there is little time to fully prepare the case. This means much supporting or even essential evidence is added by section 67 notices post indictment.

Prior to reporting to Crown Counsel, the solemn legal managers, who are principal deputes, are supposed to fully read the cases, but they do not because they do not have time. Their priority is to meet internal COPFS targets. One principal depute recently told me it is the job of the 1st diet deputes to fully read the cases as they have more time. Crown Counsel do not fully read the case, only the recommendation for proceeding and the brief summary prepared by the case preparer.

First diet deputes and trial deputes are procurator fiscal deputes and senior procurator deputes. They are the only grades of staff, with the occasional exception, who conduct 1st diets, debates and trials. If they pick up on evidential issues they are often reluctant to challenge the solemn legal managers who are also their line managers and responsible for their performance appraisals.

The result is that in my unit serious and often complex cases are being indicted for trial (1) without all the essential evidence on the indictment, (2) without being read by a legally qualified member of staff, (3) without there ever being any prospect of sufficient evidence, resulting in a huge waste of time and resources and unnecessary distress and inconvenience for witnesses.

This means evidential issues cannot be not fully addressed so a significant number of cases are proceeding to trial, or preliminary debates, with insufficient evidence to prove the case or the cases are poorly prepared .

If a trial depute raises any issues her or she are often told by their line managers to just "run" the trial because (1) it is too late to tell witnesses that there is insufficient evidence in their case, or (2) the case is just about to time bar.

The trial depute, as an officer of the court, is then in a very stressful dilemma. He or she either has to be unprofessional and face criticism in the public forum of the court for presenting a poorly prepared case, or risk censure from management should he or she refuse to "run" the case.

More recently I have refused to "run" 3 cases because of insufficient evidence. I take this stance now because of recent experience of "running" a summary domestic abuse case. In this case the accused initially appeared on petition for assaulting, and verbally abusing his partner. There was only sufficient evidence for the verbal abuse case and it was marked to proceed as a summary complaint. By mistake the summary complaint also included the assault charge. When I raised concerns about this on the day of the trial I was told by a senior manager to "run" it. At court the complainer approached me before the trial to say that she had lied to the police and had self-harmed. I had no doubt this complainer had been physically and verbally abused and humiliated by the accused but there was now even less evidence to prove that. Again I was told to "run" the trial, despite me telling the senior manager I could not morally or professionally support their decision. I ran the trial and put a frightened woman through further humiliation for no purpose.

I fully appreciate that the law is not a science but neither is it an art. We could not properly function as a society governed by the rule of law if it were an art.

In the vast majority of cases the law and the evidence are clear and unequivocal if they are properly and timeously considered and analysed. The notion that there is a difference between a sufficiency of evidence and a reasonable prospect of conviction is not known to me or my frontline colleagues

Over the years (and I mean at least 8 years!) I, along with some of my colleagues, have repeatedly raised concerns about the poor quality of cases with all levels of management and the FDA; this includes directly to individual managers, in meetings and on intranet forums. There has never been any acknowledgement by any of them that there is a problem.

I fully appreciate COPFS, like every other public sector, is working under increasing budgetary and resource pressures. But both the management and the FDA have to at least acknowledgement the problem of cases proceeding to trial with insufficient evidence in order to address it. They continually fail to do so.

Like the police, the COPFS is not a homogenous organisation. There is an ever increasing gap between management and front-line staff. Unfortunately, the FDA very much represented the management view to the Justice Committee on 15 November 2016.

Anonymous
2 December 2016