

Justice Committee

Criminal Justice (Scotland) Bill

Supplementary written submission from the Crown Office and Procurator Fiscal Service

During the evidence panel session on Part 4 of the Criminal Justice (Scotland) Bill on 19 November, I agreed to provide some further information to the Committee in writing.

In particular in relation to delays in appeals, I attach a copy of the case of [Beggs v United Kingdom Application no 25133/06](#) on the website of the European Court of Human Rights (ECtHR), which was the case I mentioned during my evidence.

In this case the ECtHR held that there had been a breach of Article 6(1) due to the periods of inactivity they identified on the part of the judicial authorities. It is fair to say that there were a number of complications which led to delay in this case, including a period during which the case was adjourned to wait for a decision of the Supreme Court. In paragraphs 211 to 273 of the judgement the ECtHR outlines what happened at each stage of the case and which periods they considered contributed to the appeal proceedings not being held within the reasonable time requirement of Article 6(1) of the European Convention on Human Rights. The appeal took 10 years in total to conclude. Not all of that period though was attributable to delays by the state. The court recognised that a substantial proportion of the delay was attributable to the applicants own conduct, as well as delays through waiting for clarification of certain aspects of law.

I referred in my evidence to the gate keeping role of the Appeal court to reject a reference from the SCCRC. In my evidence I mentioned the case of [Carberry v HMA \[2013\] HCJAC 101](#) in which the court recently rejected the reference. I attach a copy of that opinion for the attention of the Committee.

In relation to the sections 79 and 80 of the Bill the Committee asked for information about how often Bills of suspension and Advocation are used. In the 2 years up to end of October 2013, COPFS have a record of 108 Bills of Advocation and 140 Bills of Suspension.

Lastly the Committee asked for details of the COPFS' Records Management Policy, and I attach a link to the full policy which is available on the COPFS website.

[COPFS Records Management Policy](#)

The policy in relation to retention of case papers depends on the forum of the proceedings. For a High court case papers should be retained for a period of 10 years within COPFS, after which time the papers will be transferred to the National Records Archive for permanent retention. The policy in relation to Sheriff and jury and summary case differs between sexual and non- sexual cases. In Sheriff and Jury sexual cases they will be retained for a period for 10 years within COPFS, and then destroyed. All other Sheriff and jury papers are retained for a period of 5

years from trial or appeal and then destroyed, unless the Procurator Fiscal considers it necessary for further retention. For summary cases involving sexual offences the papers are retained for 5 years. In all other summary case the papers are only retained for 2 years.

This policy only applies to the Crown's paperwork. As I explained to the Committee, following the trial and any period in which the accused has to lodge an appeal, if no appeal is lodged the Crown has to return the physical items of evidence relied upon at trial, which are know as 'the productions', to their owners. Some productions may actually require to be destroyed – for example where the production presents a bio-hazard, for instance if it is blood stained. Other biological material may degrade over time and witness' memories may dim. The ability to successfully mount any retrial is accordingly not simply dictated by the availability of the Crown papers.

I hope that this information is of assistance to the Committee in its consideration of part 4 of the Bill.

Fraser Gibson
Head of Appeals Unit
31 December 2013