

Justice Committee

Scottish Government's Draft Budget 2015-16

Written submission from the FDA Union

About us

The FDA is the trade union which represents senior managers and professionals in the public sector, in particular the civil service. We represent the biggest group of lawyers within the Law Societies of Scotland, Northern Ireland and England and Wales. This includes the prosecutors in each of these jurisdictions.

As a trade union, we promote and protect our members' interests. We influence policy on their behalf, and provide networking opportunities and forums for considering matters of common interest. In relation to lawyers we also, where appropriate, represent their professional interests as well as their terms and conditions.

We defend the reputations of our members by acting as their voice in the media, with ministers and the HR profession - an important role as civil servants are usually not permitted to defend themselves publicly.

As a public sector union, we work to improve members' terms and conditions, workplaces, skills and working lives.

We are affiliated to the TUC and STUC, but are strictly politically neutral and have no formal links with any political party.

The Procurators Fiscal Society is a section of the FDA and represents over 350 members of mainly legal staff, including many of the most senior lawyers, within the Crown Office and Procurator Fiscal Service (COPFS). It began in 1930 as a professional association, and operated for over 60 years on that basis. In the early 1990s the Society became a section of the FDA. The Procurators Fiscal Society is represented on the Executive Committee of the FDA.

The Budget

The Procurators Fiscal Society Section of the FDA welcomes the opportunity to comment on the Draft Budget for 2014-15.

While COPFS appear to have received a real term increase to the overall budget, upon further analysis it is apparent that the amount provided in the budget for staffing remains at £69.1m. In real terms this is a £1.1m cut in our staffing budget for next year and that is even before pay increases and increased employer contributions are taken into account. The obvious consequence of this reduction in staffing costs is that the number of staff will have to decrease, which we believe will have a detrimental effect on our members' professional ability to prosecute cases in a timely and effective manner, their ability to meet COPFS performance targets and

therefore the proper demands of victims and witnesses in Scotland. More importantly, it will affect their health and well being.

Solemn and domestic abuse workload

Our submission is that you cannot properly assess the workload for COPFS by looking only at the number of reported cases received. There are three main issues in these statistics which we would like the committee to consider.

1. The increase in the number of serious cases reported to COPFS.
2. The particular types of crime which make up this increase.
3. The nature and complexity of these cases which are more demanding and resource intensive.

Analysis of the number of criminal case reports received from the police in 2013/14 shows a 5% increase from 2012/2013 (from 280,942 to 293,672), which is up 10% since 2010-11. Additionally, upon further examination, the profile of the type of cases that COPFS are now receiving has changed. More importantly, the work involved in dealing with such cases is much greater.

There has been a significant increase in the number of cases received which are to be prosecuted on 'petition' (i.e. solemn proceeding before a jury – either Sheriff Court or High Court)

Year	2012/13	2013/14	2014/15
Number of new petitions	9,340	10,302	11,130 ¹
Percentage increase/decrease from previous FY	n/a	+10.3%	+8.0%

Of further significance is the increase in recent years of possible petition cases which are referred to as "pre petition cases". These cases are predominantly sexual cases. Pre petition investigation is used in these cases for a number of reasons including to explore sufficiency of evidence to proceed and to investigate any credibility issues in the evidence. The time given to carry out further work can be from 2 to 8 months. Over the last three years 590 cases of that sort were reported in 2012/3, 747 cases in 2013/4 (a rise of 26.6%) and for the first 6 months of 2014/15 289 cases.

Since the inception of Police Scotland, there has been an increased focus on domestic abuse cases, particularly with the creation of the Domestic Abuse Task Force. The DATF cases tend to be more complex as they invariably involve multiple complainers and can span over several years.

As an example, we understand from our members that an average straightforward High Court case takes a legal member of staff just over one day to carry out all the checks which require to be made to serve an indictment in the case. A DATF case however takes more than 3 days to carry out the same process.

1. projected, based on YTD figure of 5,565 (representing half year)

There has been no additional COPFS resource to deal with these cases despite the increased work.

Year	2012/13	2013/14	2014/15
Number of domestic abuse markings	20,212	24,608	25,092 ²
Percentage increase/decrease from previous FY	n/a	+21.7%	+2%

While looking at Police Scotland initiatives such as the DATF, we would also make the general observation that whilst there was a commitment from the Scottish Government to employ 1,000 additional police officers (and a subsequent commitment to maintain police numbers at those levels), there has never been a commensurate rise in the budget of COPFS to deal with the inevitable increase in work generated by those additional police officers.

We also know that around 70% of the work dealt with in our High Court Unit now relates to sexual offending. These cases tend to be more time consuming because they involve medical and other sensitive records that need to be considered, and there are often complex issues involved relating to sufficiency of evidence.

In October 2011 COPFS instructed that there was a strong presumption against taking precognitions (an investigative interview of a witness or victim). This decision related partly to disclosure and the difficulties of disclosing the relevant parts of a precognition, but was also recognised as a resource saving to allow precognosers to deal with the increasing level of petition business. Recently COPFS have instructed that in all High Court sexual cases there must be an early meeting between the victim, the Victim Information and Advice (VIA) Officer and the case preparer to discuss a variety of issues and, where appropriate, to precognosce them on their evidence.. We make no criticism of this reversion in policy and we accept the benefit and reassurance it provides to victims in such cases. However, there is undoubtedly an additional resource requirement in so doing.

In summary, legal and administrative resources are decreasing at the same time as the level of serious cases increases. This is creating a huge risk for the Criminal Justice System as a whole. We understand from our members that this increase in serious business has meant that COPFS targets for Solemn cases are unlikely to be met in this financial year. These targets are that 80% of Sheriff and Jury Solemn cases should be indicted (i.e. an Indictment served on the accused) within 8 months of the accused's appearance on petition in court and in High Court cases the target is 80% within 9 months of first appearance.

Perhaps more worrying is that we have recently been told by our members that an increasing number of these serious cases at Sheriff and Jury and High Court level

² projected, based on YTD figure of 12,546 (representing half year)

are being indicted on the last date of service before they time bar. This is not acceptable for our members, the courts or the victims.

Court pressures

We know that there has been an increase in the numbers of cases which now conclude in Court, rather than by means of non-Court disposal. More significantly for our members there has been a substantial increase in the numbers of cases which are proceeding to trial. There is an obvious pressure therefore on our members in preparing for and running these cases. There has been an 11.75% overall increase in trials, and unlike the solemn cases referred to above, the pressure here is probably most greatly felt in the summary courts as that is where the volume of increase will be most acutely felt.

Other factors in relation to workload

There are a range of additional aspects to our work which over the years has increased the workload of our members.

For example, whilst disclosure has been with us for some years now, it still forms a very substantial part of our work, particularly in the more serious cases. It is extremely resource intensive and was 'absorbed within existing resources' at the time, despite adding significantly to our workload.

Legislative developments in, for example, the treatment of vulnerable witnesses and admissibility of evidence are leading to new procedures and also require more work, as do the advances in technology and the increasing globalisation of crime that add a fresh layer of complexity to criminal investigations.

Looking specifically at the Victims and Witnesses (Scotland) Act 2014 and the new victims' right to review decisions not to prosecute, we understand that COPFS is being required to implement this with no additional resources. It is our understanding that certain aspects which will be required in terms of this new legislation, namely the notification of the decision and the right to request a review, will be automated and efforts are being made to minimise the impact on workload for COPFS staff. It is undoubtedly true however that if the right is exercised by significant numbers of victims that will only increase the workload of staff who are already under pressure.

We know that work is underway by COPFS to exploit new technology solutions and streamline work practices in order to deal with the challenges we have outlined above. The difficulty for our members in such a strategy is that any benefit felt in such changes may not be realised for months or years down the line. Some of our members report to us that they are already struggling to cope with their workloads and need to see a solution to alleviate that pressure far more quickly. Our fear is that the change programme can only seek to mitigate against the impact these cuts in our staffing levels will have.

Last year the FDA (together with PCS) undertook a stress audit with all staff in COPFS. At that time, almost 81% of legal staff respondents said that they had serious concerns about preparation time, workload and staffing levels. 23% of legal

staff said that lack of preparation time was a serious cause of stress to them. We continue to hear anecdotally from members that such issues remain of concern to them and the FDA is committed to protecting the health and well-being of our members.

We do not propose to focus in this evidence on the bald staffing figures as we believe that any such consideration has to be in the context of the explanation we have provided above. We would observe however, that we currently employ 487 legal staff³, 68 of whom are on fixed term contracts (including legal trainees). This is a reduction from the high point in December 2009 at 558⁴ (84 of whom (including legal trainees) were fixed term). This is an overall 12% reduction in our permanent staffing levels. With the proposed reduction in our staffing budget we expect the number of posts to continue to fall and any recruitment which does take place is likely to be only on a fixed term basis.

We appreciate that it is for budgetary reasons that COPFS has pursued a policy of principally recruiting legal prosecution staff on fixed term contracts, but the FDA is extremely concerned about the long term consequences of this policy. In the past legal trainees joined COPFS with the intention of becoming a career prosecutor and, as a former Solicitor General once said, "Fiscals do not grow on trees". They require to be recruited, trained and developed in a process that takes a number of years.

The long term effects of this policy have yet to be realised but could result in a shortage of Prosecutors in the future. The short term effects include a high turn over of temporary staff and low staff moral. Employment for our trainees is no longer something which they can rely upon and many of them are now starting to look to their future careers beyond COPFS.

Court closures

The FDA does not at present have the statistical evidence to demonstrate that as a result of the closure of any particular court, a given percentage of business has passed to another office. Nor do we have access to any figures which may show what affect that has had on the time that cases are taking to proceed through courts. What we can say is that there are only a finite number of courts to deal with the total reported cases.

It follows therefore that if the number of courts decreases and the cases do not, there will be a consequential effect on the system. Anecdotally, we can advise that our members report to us their observation of an increase in 'churn' in those areas where there has been a reduction in the courts available and where there have been court closures.

Summary

Fundamentally, the position of the FDA is that whilst it is not the business of a trade union to dictate the details of any government's budget, the resources available have

³ As at September 2014, 419 permanent staff

⁴ As at December 2014, 474 permanent staff

to match the commitment of service provision demanded of that organisation. It follows therefore that either:

- COPFS requires to be adequately resourced; or
- Decisions require to be taken to review the commitment required from the Service.

The professionalism and dedication of Procurators Fiscal to the public interest is steadfast, but their task is increasingly difficult against that background. There is, already, a risk that current conditions may place the health and welfare of prosecutors in jeopardy and that morale may deteriorate further.

We cannot see how COPFS can continue to deliver current or improved standards of service with fewer staff. We fear that, not only will our members bear the consequences of these increased pressures, but there will inevitably be an impact on the wider justice system and the service provided to the public.

In conclusion, we would wish to be clear that our evidence should not be seen as an attack on those who manage COPFS. As indicated above, we know that our senior managers are working hard to find solutions to the challenges for COPFS from within existing resources. We believe they have been set an unrealistic task. SCS and senior grades within COPFS have been greatly reduced which has placed significant additional burdens on managers at these levels. Our relationship with senior management is a constructive one, especially in these difficult financial times. We have our differences but, generally work together wherever possible to ensure that the department, our members and the wider stakeholder community benefits from the work of organisation.

We hope this information is helpful to the committee. We would of course be happy to expand upon the above in oral evidence if required.

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10 November 2014