

Justice Committee

Scottish Government's Draft Budget 2016-17

Written submission from the Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's sole prosecution and fatality investigation service in respect of deaths which require further explanation. COPFS acts independently in the public interest on the authority of the Lord Advocate.

COPFS receives initial investigation reports about crimes from the police, and all other reporting agencies in Scotland, and decides, independently and impartially, what action to take in the public interest, including whether to prosecute.

We also enquire into deaths that need further explanation and investigate allegations of criminal conduct against police officers.

Our purpose is to secure justice for the people of Scotland, making it a safer place to live.

As the sole independent prosecuting authority it is clearly crucial that decisions can be taken on whether or not prosecutorial action is to be taken without fear or favour and based solely on the available evidence and consideration of the Lord Advocate's policies on prosecution.

The Lord Advocate does not become involved in Cabinet collective discussions around allocation of funding or setting of budgets for any other justice sector or government-funded organisation as other Ministers such as Cabinet Secretaries do. That is why the arrangements for the COPFS budget allocation differs significantly from that of many of the other justice sector organisations. To protect that constitutional independence as sole prosecutor the Lord Advocate negotiates directly with the Cabinet Secretary for Finance in respect of the COPFS budget.

The Crown Agent, who among other roles, acts as the Lord Advocate's principal legal advisor on prosecution matters and Head of the civil service staff of COPFS, also acts as Chief Executive of COPFS and Accountable Officer, ensuring that the budget allocated to COPFS is spent appropriately each year to meet the delivery of the Lord Advocate's prosecutorial and fatality investigation objectives and in accordance with the accounting rules that apply at the time.

In all our decisions we take into account the diverse needs and rights of victims, witnesses, communities and of those accused of crime.

Public sector funding remains under pressure. For several years COPFS has understood that this is likely to continue for the foreseeable future and has responded to tightening financial constraints by reform designed to increase efficiency and improve quality, in the governance structure of the organisation and across delivery of all our services. We are a demand-led, front line service delivery organisation. All of our staff contribute to delivery of these. Unlike many other public

sector organisations and most other justice sector organisations we have no source of revenue apart from the budget set by the Scottish Parliament.

How the COPFS budget for the current year has been allocated, where savings have been made and, what impact levels of spending have had on services.

The COPFS allocation for 2015-16 is outlined below:

Original Spending Review allocation

£m	2014-15		2015-16	
	Running Costs	Capital	Running Costs	Capital ¹
Cash	100.6	3.6	100.6	3.6
Non cash (ring fenced)	4.5		5.2	
Totals	105.1	3.6	105.8	3.6
Grand total		108.7		109.4

- increase of £0.7m is non-cash cover for depreciation.

“One off” additional funding

Large / sensitive cases	2.0		2.7	
Additional Fiscal Costs Violence against girls and women	0.47		0.95	
Revised RC total	107.57	3.6	109.45	3.6
Grand total		111.17		113.05

Budget allocation

In 2012/13 COPFS moved from an area-based structure to one of four Federations (East, North, West and National (comprising of Serious Casework Group and Corporate Services Group)). At the same time, within the Federations, staff were brigaded into functions to develop specialist skills in key aspects of our work.

Budgets for 2015-16 were set at Federation level following an Annual Business Planning Round during which each Federation was required to submit:

- a Strategic Outlook/plan;
- An analysis of what will have to delivered by function;
- The resources needed to deliver these outputs by function;
- Staff budget bid with analysis by FTE with functional breakdown;
- Non staff budget bids;

¹ The COPFS capital allocation was £7.2m in 2010-11. It was halved for 2011-12 and has remained as flat cash since. The capital budget is used to maintain our IT infrastructure and our property estate (9 owned buildings circa 38 leased).

Commentary and Risks by function.

A balanced overall budget for 2015-16 was set by the Executive Team in January 2015.

Savings

As the increase in core running costs funding of £0.7m was purely ring fenced non-cash, COPFS 's allocation was actually flat cash, leaving us to absorb wage inflation including incremental movement of approximately 3.5% and non-wage inflation assumed to be around 2%.

COPFS absorbed this reduction whilst continuing to exceed published targets and delivering "unanticipated" work, for instance, dealing with the Clutha helicopter tragedy, the Glasgow bin lorry tragedy and further developments in the Lockerbie case.

Impact

Our ongoing programme of efficiency and effectiveness gains means that in 2015-16 we have been able to continue to absorb increasing demand with reducing real-term resources.

As Audit Scotland observed in their recent report, Efficiency of Prosecuting Criminal Cases in the Sheriff Courts, COPFS' overall budget fell by 14% between 2010-11 and 2014-15. Whilst total COPFS staff figures have reduced by around 10% over the last 5-6 years, the numbers of senior civil service posts has fallen by 36%. However, the volume and complexity of cases has increased, particularly for sexual offence cases.

I have set out below a number of examples showing how we are achieving a great deal, but illustrating how at the same time the pressure on our resources is growing.

In relation to High Court our figures show that there were 225 trials in 2010-11, rising by almost 50% over a 5 year period to 334 in 2014-15. SCTS project 440 this financial year and 470 next financial year. SCTS estimate that each High Court trial costs COPFS, SCTS and SLAB £95,000.

Our figures show that there were 435 rape or attempted rape charges in the High Court in 14-15 compared to 88 in 10-11. A proportion of the increase will be due to the statutory change to the definition and a proportion due to the welcome (from a society perspective) increase in reporting of historic sex abuse cases.

COPFS maintains a dedicated Cold Case Review Unit. This unit deals with all non-recent homicide cases where the perpetrator has not been brought to justice, including cases brought under the Double Jeopardy (Scotland) Act 2011, and ensures equality of service for all those impacted by homicide no matter when the offence was committed. A small team core team of 4 specialists review these cases and maintain the COPFS Unresolved Homicide Database. Depending upon the number of "live" case at any one time the number of staff deployed to this type of work can be significantly more than that. For the most part the age and complexity of Cold Cases means that they are more resource intensive than a "new" homicide.

The successes of the Unit so far include the identification of a man who had he still been alive would have been indicted for the murder of Moira Anderson, the conviction of Angus Sinclair for the “World’s End” murders, and the conviction of John Docherty for the murder of Elaine Doyle in 1986. Two extradition warrants have been issued in relation to Cold Cases and two Double Jeopardy applications are currently before the court. We would like to be able to maintain this activity going forward in the interests of demonstrating our commitment to securing justice.

In relation to Sheriff and Jury Court our figures show that there were 982 trials in 10-11, rising by almost 35% over the 5 year period to 1,328 in 14-15. The SCTS project that there will be around 1,500 trials this financial year and around the same level in 2016-17. They estimate that each S&J trial costs COPFS, SCTS and SLAB £18,000.

In relation to Sheriff Summary our figures show that there were 5,178 trials in 10-11 rising by over 20% to 6,248 in 14-15. SCTS estimates each Sheriff Summary trial costs COPFS, SCTS and SLAB £2,700. 31,373 domestic abuse charges were marked for Court in 14-15 compared to 20,673 in 11-12 (an increase of over 50%).

In recent years COPFS have considerably improved the level of support and information provided to victims. Of particular note is the bespoke victim strategy that is prepared in all High Court Sexual Offence cases. This is a strategy for communication that is individual to the victim’s needs. Recent policy changes in key areas, such as in cases dealing with older persons, have also contributed to an improved service provided to victims. Whilst it is not possible to put a headline cost on these improvements, COPFS is very aware that this level of support and information to victims and witnesses is more time-consuming for staff than in previous years and is an existing and increasing pressure that COPFS are grappling with.

Implementation of the Criminal Courts Practice Note No. 3 of 2105 is designed to bring into operation some of the reforms which will ultimately be brought into legislative form with the enactment of the Criminal Justice (Scotland) Bill – the “Bowen Reforms”. The Practice Note will involve additional work from the perspective of COPFS in effecting early engagement with the defence and recording the outcome of those discussions in a Written Record to be submitted to the court. The additional work involved in doing this, it was anticipated, would be offset by savings arising from the enactment of the Criminal Justice (Scotland) Bill in relation to citation of witnesses but the implementation of the Practice Note on 1 December 2015 will give rise to additional work for COPFS over a significant period of time (7 - 12 months) before any savings can be realised.

The current position with financial planning for 2016-17, including details of how the COPFS is planning it would respond to a range of budgetary allocations.

Our allocation for 2016-17 will be set by the Scottish Government as part of its 2015 Spending Review (the draft budget is scheduled to be published on 16th December 2015).

We know that the public expenditure environment will be challenging for the foreseeable future across the public sector. We are therefore continuing to take every possible step to increase our efficiency so that we secure maximum value for every pound.

Given that around two-thirds of our expenditure is directly related to our payroll we have established a Workforce Planning group to ensure that we are able to deliver our statutory responsibilities effectively and efficiently.

We have set up the “Shaping the Future” programme to develop a fit for purpose, sustainable management structure and culture for COPFS to enable the organisation and the people within it to face the challenges ahead. As part of Shaping the Future we are looking to enhance still further the efficiency of all our corporate and common services so that the maximum amount of money is spent on front-line activity.

We are continuing to implement a Corporate Improvement Programme which is reviewing systematically all of our processes and developing and implementing changes designed to improve quality, speed up engagement with stakeholders and customers, and save money.

We are developing digital and estates strategies designed to secure maximum value from our investment in IT and to establish priorities for use of the buildings we occupy.

We are collaborating with partner organisations in operating enabling services. For example, our shared estates services with SCTS yields savings of approximately £250k pa, while our contract with Scottish Government procurement service is enabling us to make savings by participating in collaborative contracts.

Prosecution Policy is continually reviewed to ensure that it meets public expectation. We continue to look at an evidence base of outcomes to ensure that the cases are prosecuted at an appropriate level. Where we can we will utilise full use of our direct measures, including fiscal fines, fiscal work orders and compensation orders to ensure that the cases that are prosecuted in court are the more serious cases that require an outcome imposed by the judiciary. We will continue to work with Police Scotland to ensure that they make full use of their powers to deal with low level matters by way of warnings and only report cases to COPFS where a prosecution may be necessary.

Areas where the COPFS have identified a need for additional spending or scope for savings in 2016-17

As discussed above, we are looking across all parts of COPFS activity to save both money, and staff time which can be redeployed to add maximum value.

A major new pressure for COPFS in 2016-17 will be introduced with the implementation of the Inquiries into Fatal Accidents and Sudden Deaths etc Scotland Bill. The statutory “milestone” charter will introduce additional meetings with families in a percentage of the deaths cases that COPFS further investigate. This will lead to increased costs to COPFS in staff time that would need to be deployed onto this activity.

We will also need to absorb inflationary pressures, which we estimate as follows:

Increases in pension contributions are estimated to be approximately £1.1m;

Wage inflation is estimated to be approximately £1.5m;

Non-wage inflation is estimated to be approximately £0.4-0.9m

Any potential areas of savings which have been considered but rejected.

None. We are considering every possible opportunity for savings. Our priority is to continue to deliver our statutory duties and provide the highest possible standard of service to all our stakeholders.

Any significant factors which limit the flexibility of the COPFS in managing relevant budgets and making savings.

We recognise that the outlook for public expenditure is challenging. Across COPFS staff have adapted to major changes over the last few years, adopted new approaches in the way we work, and suggested further solutions for the future to ensure that COPFS can continue to secure justice for the people of Scotland. We very much appreciate that this unprecedented environment of constant significant change and budgetary constraints over the last decade has been extremely challenging for them and we commend the dedication, commitment and professionalism of our people in dealing with these continuing challenges.

In COPFS we will do our very best to continue to deliver our current level of service and absorb the new pressures identified above in 2016-17; however our room for manoeuvre is becoming much more limited.

Conclusion

I have annexed some further detail on our work that may be of interest to the Committee and would be happy to provide any further information that is considered helpful.

Catherine Dyer
Crown Agent & Chief Executive
24 November 2015

COPFS General Background

What We Do

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's sole prosecution and fatality investigation service in respect of deaths which require further explanation. COPFS acts independently in the public interest on the authority of the Lord Advocate.

COPFS receives initial investigation reports about crimes from the police, and all other reporting agencies in Scotland, and decides, independently and impartially, what action to take in the public interest, including whether to prosecute.

We also enquire into deaths that need further explanation and investigate allegations of criminal conduct against police officers.

The Lord Advocate's position as head of the systems of criminal prosecution and investigation of deaths is enshrined in the Scotland Act.

Our purpose is to secure justice for the people of Scotland. We are committed to playing our part in making Scotland a safer place to live.

Our vision is to be the world leading public prosecution and death investigation service.

Our main objectives are:

- criminal cases are effectively and independently investigated and prosecuted or have other proportionate action taken in the public interest;
- deaths which need further explanation are appropriately and promptly investigated;
- financial gain achieved by criminal means is removed from criminals using proceeds of crime laws;
- a level of service which takes account of individual needs and characteristics is provided to all;
- victims, nearest relatives and witnesses and those accused of an offence are treated with dignity and respect.

We contribute both directly and by working collaboratively with other parts of the justice system, to deliver the Scottish Government's Strategy for Justice in Scotland. This aims to deliver a justice system that contributes positively to a flourishing

Scotland, helping to create an inclusive and respectful society, in which all people and communities live in safety and security, individual and collective rights are supported, and disputes are resolved fairly and swiftly.

The “Strategy for Justice in Scotland” sets the following priorities:

- reducing crime, particularly violent and serious organised crime;
- tackling hate crime and sectarianism;
- supporting victims and witnesses; and
- increasing public confidence and reducing fear of crime.

It identifies a number of Justice Outcomes which describe what the strategy is aiming to achieve. Through its objectives, COPFS contributes to the following Justice Outcomes:

- we experience low levels of crime and low levels of fear, alarm and distress;
- we are at a low risk of unintentional harm;
- our people and communities support and respect each other, exercising both their rights and responsibilities;
- our public services are fair and accessible;
- our institutions and processes are effective and efficient;
- our public services respect the rights and voice of users.

We will continue to work with other parts of the criminal justice system to develop ever more productive working arrangements, performing a key role in the implementation of the various reforms to criminal law and procedure underway and planned in the years ahead, especially improving the quality of justice for victims and witnesses.

OUR PRIORITIES

The Law Officers’ priorities are to contribute to:

- Improved public safety;
- Reduced individual harm; and
- Enhanced economic and environmental well-being.

in line with the over-arching Justice Vision of contributing positively to a flourishing Scotland, helping to create an inclusive and respectful society in which all people and communities live in safety and security with individual and collective rights being supported and disputes resolved fairly and swiftly.

This includes tackling inequality and protecting human rights. Operational priorities make it clear that prosecutors are targeting hate crime, domestic abuse, stalking and sexual offending, all of which involve significant equalities issues for those who have protected characteristics across all sections of society.

During 2016-17 our priorities will continue to be to:

- prosecute complex, serious and organised crime including terrorism, murder, serious assaults, sexual offences, serious domestic violence, hate crime, drug and people trafficking and significant financial crime before the High Court and Sheriff and Jury courts;
- take action to recover associated proceeds of crime;
- conduct prosecutions before Justice of the Peace and Sheriff courts in respect of anti-social behaviour, domestic abuse and hate crime; and
- meet the challenges arising from changes in the legal environment, including changes in the causes of crime, judicial decisions and planned legislation.

What the budget does

The COPFS portfolio contributes to a safer and stronger Scotland. COPFS is proactive in prosecuting crime which is committed but our work is also preventative to help reduce crime and fear of crime, improve conditions which support economic development and social capital in communities and enhances the quality of life of Scotland's people.

In 2016-17 we will continue to:

- prosecute crime;
- support victims of crime, vulnerable witnesses and bereaved relatives;
- use infrastructure expenditure to maintain and improve our Information Technology systems, to increase case-processing efficiency, improve communications with victims and witnesses and to ensure compliance with employer and public authority legislative requirements.

COPFS Strategy for the Future

We published our strategic plan 2015-18 on 2 February 2015.

As with all public sector organisations, the challenge for COPFS is to ensure we meet these objectives within our allocated budget. We will be focusing on optimum use of the enablers which we have access to namely people, digital, continuous improvement, partnership working and finance.

We recognise the continuing pressing need to optimise resource and further improve quality.

Budget

Recent trends in our business assist in setting the context around the budget allocation for 2015/2016.

The changes in our caseload in 2014-15 compared to 2013-14 were as follows:

Volume of cases received:

- Criminal reports received– a 17% decrease (from 293,700 to 244,400). Much of this decrease was due to a decrease in the number of road traffic cases reported;
- Death reports received- a 4% decrease (from 9,550 to 9,170).

How these were dealt with:

Non Court

- **No Action Decision- 3% decrease** (from 27,800 to 27,000).
- **Warning Letter– 1% increase** (from 7,780 to 7,830).
- **Fixed Penalties– 35% decrease** (from 23,800 to 15,500).
- **Fiscal Fines– 25% decrease** (from 46,700 to 35,200).
- **Other Non-Court Disposals (includes compensation orders, combined Fiscal Fines and compensation orders, diversions from prosecution, etc)- increase of 1%** (from 15,400 to 15,600).

Court

Over the past year we have seen an overall increase in numbers of cases concluded in Court (a **2% increase** between 2013-14 and 2014-15, from 96,850 to 98,740) but that masks larger increases in the numbers of cases not being resolved at the pre-trial hearings and which therefore go to trial. The figures below show the change in numbers of cases concluded and trial numbers for each type of Court between 2014-15 and 2013-14:

- **JP Court cases concluded– a 2% increase** (from 36,100 to 36,880) but there was a **31% increase** in the numbers of trials.
- **Sheriff Summary cases concluded - a 0.5% increase** (55,400 to 55,670) but there was an **21% increase** in the number of trials
- **Sheriff and Jury cases concluded – a 18% increase** (4,760 to 5,640) including a **9% increase** in the number of trials
- **High Court cases concluded– a 9% decrease** (600 to 550) with a **8% decrease** in trials compared to 2013-14 (there were 362 trials in 2013-14. The 334 trials in 2014-15 represents a nearly 50% increase on the numbers in 2010-1).

'Pre-Petition Work'

In addition to preparing and presenting cases which are from the outset clearly able to be prosecuted in a solemn court - Sheriff & Jury or the High Court - COPFS also requires to devote resource to investigating a significant number of serious criminal allegations contained in reports which are properly submitted for consideration of prosecution but which require extensive work before a decision can be made about whether the case can go to court and in a number of instances the decision is ultimately that they cannot proceed.

For example when a case alleging serious sexual offending is reported to COPFS, exceptionally detailed and thorough investigation requires to be carried out often involving consideration of lengthy records and the commissioning and consideration of expert forensic, medical or other specialist reports before any decision can be made as to whether there is a sufficiency of credible and reliable evidence to allow prosecution proceedings to be raised.

A decision that the case cannot proceed to court made after that work can arise for a number of reasons. For example, although it is clear that a witness claiming they were sexually assaulted is credible and reliable, it is not possible to find evidence to meet the current corroboration requirement or because an essential witness has mental health issues such that their wellbeing would be unduly impacted by their being required to give evidence in court but the case would not prove without that evidence.

Such work is referred to in COPFS as “pre-petition” work because a Petition is the first court document in a solemn case and prosecutors have to establish if there is information which can be brought together to justify a decision to commence court proceedings on Petition.

This work often involves much more complex evidential and legal analysis than with cases which are able to be placed on Petition immediately following receipt, and often also involve numerous meetings with victims and essential witnesses, and detailed consideration of voluminous medical and social work records, all of which needs to be completed and can take several months and in some instances over a year before that decision can be taken.

In 2013-14, around 770 cases of this sort were investigated. Around 620 such cases were investigated in 2014-15.

Initiatives

There are a number of initiatives being undertaken within COPFS to produce further improvements in quality of delivery of our Service and efficiency savings and a few are referred to below.

We are committed to meeting the requirements of the Victims and Witnesses (Scotland) Act 2014 and have current projects to improve our customer contact service, using all methods of communication with a focus on our first line of information being digital, through our website, offsetting the additional costs involved in providing better information for victims and witnesses and further streamlining our internal processes and procedures. We are also working on digital solutions with justice system partners to devise electronic means of intimation and notification, which will be quicker and more efficient, saving time and resource while making sure we can all handle the increased numbers of court notices which will be required for deemed vulnerable witnesses under the Act.

We know, from previous improvements that we have delivered, that specialisation brings about efficiencies as well as improving quality. We have seen this through the establishment of our specialist units, such as National Sexual Crime Unit and the major structural changes commenced in 2012 which introduced geographical federations and brigading of our front line staff into our core functions of Initial Case Processing, Summary, Sheriff and Jury and High Court. We intend building on the success of functional working, further streamlining processes and delivering continuous improvement. Work is underway to scope nationally managed units, for ICP and High Court, whilst continuing to concentrate on presentation of Summary and Sheriff and jury cases in local courts.

We are exploring the best use of all types of resources, including technology, to ensure that Sheriff and Jury cases are prepared and prosecuted as efficiently and effectively as possible and continuing work with our partners to implement the Sheriff and Jury reforms set out in the Criminal Justice (Scotland) Bill, in order to lay a sound foundation for a smooth transition as and when the relevant parts of the Criminal Justice Bill are introduced in to law. That includes changing the way the work is done in relation to case preparation, effective communication with the defence, resolution of cases at an appropriate stage and new ways of presentation of evidence in Court.

We are working with Scottish Court Service and other criminal justice partners to implement the SCS move towards 3 High Court centres, 16 Sheriff & Jury centres and to explore the proposal for the creation of 3 Justice Centres.

We will be part of Scotland's Digital Future and currently are further improving our IT systems and services to support business delivery; developing integrated corporate systems and reviewing our estate, all to ensure we both align with new justice system structures and operate our Service as cost-effectively as possible.