

Justice Committee

Scottish Government's Draft Budget 2016-17

Written submission from the Procurators Fiscal Section of the FDA

Thank you for inviting the Procurators Fiscal Section of FDA to submit evidence for consideration by the Justice Committee in respect of the 2016/17 budget for COPFS.

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 360 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

We have seen the letter which was written by the Crown Agent and Chief Executive of COPFS, Catherine Dyer, and would align ourselves with many of the observations and information contained in that letter.

Where we differ is in relation to the conclusions, which suggest that we will try to deliver the same levels of service and also absorb the additional pressures outlined for 2016/17. It is suggested that our room for manoeuvre in this regard is limited. We do not consider it to be reasonable or achievable to continue to expect the service to deliver more with less.

You may recall that last year we indicated that 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 to match the service provision demanded of that organisation. It follows therefore that either COPFS requires to be adequately resourced or political decisions require to be taken to review the commitment required from the service. Whilst we are not oblivious to the current financial climate, our view is that current resources are insufficient for the additional demands placed on and increased workload of the service.

We would refer the committee to our written submission and supplementary letter of 24th November 2015 (copies of which can be provided if that would be helpful) as our concerns about workload pressures are very similar this year.

We note that data has been provided in relation to the cost of High Court and Sheriff and Jury trials and the very significant rise in this number (particularly in relation to sexual offences). This is however only part of the picture as it appears to exclude a significant amount of our business.

The estimate shows that there will be around 1,500 Sheriff and Jury trials this financial year. However, we understand that in excess of 4,600 indictments have been served in the year to date. Some of those indictments will be prosecuted in the High Court, some may be reduced to the Summary Court (for some there may be insufficient evidence to proceed). Each case will however require to be prepared as if it were proceeding to trial and this is one of the most resource intensive aspects of our work. The Crown Agent makes reference to additional work required for Sheriff and Jury cases arising from the 'Bowen reforms', we would question the premise that the additional work will equate to *anticipated* savings perhaps a year or more away in relation to the citing of witnesses.

We understand that in terms of our performance indicators for High Court work, almost 40% of those cases (approximately 240 accused persons) were indicted with less than 4 weeks to the expiry of the statutory timebar. Indeed our members advise that it is still the norm for the vast majority of High Court cases to be indicted on either the very last day for service before timebar (or the day before). The target is that 80% of cases should be indicted before 9-month date (ie. 4 weeks before timebar). In Sheriff and Jury, we understand that only 71% of cases are meeting that target. There is a significant risk to cases in these circumstances and it is putting our members under great pressure, which we consider to be detrimental to their health and wellbeing.

We understand that as of May 2016 the Scottish Court Service have arranged for two further High Court trials courts to sit in Glasgow. Whilst steps to relieve the pressure on High Court are to be welcomed, there will none the less be a corresponding impact in terms of the staff and administration required in order to service the work generated by those courts.

Our National Initial Case Processing unit (ICP) deals with the initial consideration of police reports and other reporting agencies and makes the decisions regarding sufficiency of evidence and prosecution or other non-court disposals for each case. Staffing shortages in this unit mean that there is constant overtime available at

evenings and weekends in order to meet performance targets. Recruitment into this unit has been ongoing for some time, but the service are clearly limited in their capacity to fill posts. There has been a consequential impact on the unit's capacity to take over national responsibility from local offices for dealing with all 'custody' cases (those cases where the accused person is detained in police custody). Overtime is not a sustainable way to manage the work of this unit and it clearly has a negative impact on the work life balance of our members.

We would particularly align ourselves with the Crown Agent's observations regarding the Victim's Strategy, which was delivered, we understand, without any additional funding. Whilst this may be welcome from a public policy perspective as a means of improving our service to victims, it nevertheless has a significant impact on staff resource.

We also note that the Crown Agent's letter does not mention the Victim's Right of review. Whilst at present the numbers of those victims who have taken up that right may be relatively few. However, we still require to identify cases, track them and keep them open while the review period is extant. Our information is that the average time to review one sheriff summary case is ½ a day. Based on the number of cases reviewed so far, we understand this to be the equivalent of one full week per month for a legal member of staff.

There have recently been a number of initiatives and legislative developments which have significantly increased the workload and consequent pressures on staff. These include the prioritisation of domestic abuse and stalking cases, house breaking cases, abuse in institutions and the requirements of the Victims and Witnesses Act. We understand why these aspects of our work are priorities for the Law Officers and the politicians and we do not make any criticism of them from a public policy perspective. However, it must be recognised that every time additional work is undertaken to meet these demands there is a substantial impact on the time available for our staff. It cannot simply be that on every occasion we are required to absorb the extra demands and implement change on a 'cost neutral' basis.

The professionalism and dedication of Procurators Fiscal to the public interest is steadfast, but their task is increasingly difficult against this background. We firmly believe that there is a risk that current conditions may place the health and welfare of prosecutors in jeopardy and that morale may deteriorate further, as demonstrated in the recent Civil Service People Survey results.

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. We know that our senior managers are working hard to find solutions to the challenges for COPFS from within existing resources. However, we believe they have been set an unrealistic task. The decision about adequate resourcing and setting the demands and priorities for the organisation is a political one.

We hope this information will be of benefit to the committee and would of course be happy to assist further in future.

Allan Sampson
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