



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

7th Meeting, 2016 (Session 5)

Tuesday 25 October 2016

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 3 and 4 in private.

2. **Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service:** The Committee will take evidence from—

Sandy Brindley, National Co-ordinator, Rape Crisis Scotland;

Tom Halpin, Chief Executive, Safeguarding Communities - Reducing Offending (Sacro);

Marsha Scott, Chief Executive, Scottish Women's Aid;

Susan Gallagher, Chief Executive, Victim Support Scotland;

and then from—

Liam McAllister, President, Aberdeen Bar Association;

Paul Nicolson, Dean, Airdrie Society of Solicitors;

Stephen Mannifield, President, Edinburgh Bar Association;

Lindsey McPhie, President, Glasgow Bar Association;

Michael Clancy, Director of Law Reform, Law Society of Scotland.

3. **Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service:** The Committee will consider potential witnesses for its inquiry.

4. **Draft Budget Scrutiny 2017-18:** The Committee will consider its approach to the scrutiny of the Scottish Government's Draft Budget 2017-18.

Peter McGrath  
Clerk to the Justice Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5195  
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

**Agenda item 2**

Paper by the clerk - Inquiry into COPFS

J/S5/16/7/1

Private paper - Inquiry into COPFS

J/S5/16/7/2 (P)

[Written submission from Rape Crisis Scotland](#)

[Written submission from Sacro](#)

[Written submission from Scottish Women's Aid](#)

[Written submission from Victim Support Scotland](#)

[Written submission from Aberdeen Bar Association](#)

[Written submission from Edinburgh Bar Association](#)

[Written submission from Glasgow Bar Association](#)

[Written submission from the Law Society of Scotland](#)

**Agenda item 3**

Private paper - Inquiry into COPFS

J/S5/16/7/3 (P)

**Agenda item 4**

Private paper - Draft Budget 2017-18

J/S5/16/7/4 (P)

## Justice Committee

7th Meeting, 2016 (Session 5), Tuesday 25 October 2016

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

#### Note by the clerk

#### Introduction

1. The Committee agreed to hold an inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS) at its Business Planning Event in August.
2. The remit of the inquiry is set out below.

The COPFS is Scotland's independent prosecution service, acting in the public interest to help bring offenders to justice. The core role of the COPFS is to consider reports about crime from the police and other agencies, to decide whether it is in the public interest to prosecute them, and, if so, to deploy the resources that are necessary to help ensure that justice is done.

The Committee's inquiry will focus on this core role, examining in particular—

- The effectiveness and efficiency of the COPFS, and how well it works with other stakeholders in the criminal justice system;
- Whether the COPFS has the resources and skillsets it needs to carry out its core role;
- The COPFS's responsiveness to new challenges and opportunities including the evolving nature of crime in 21st century Scotland, advances in technology, and changes in the delivery of court services that may affect access to justice;
- How the COPFS protects and supports witnesses and victims of crime.

The Committee will also take evidence on the role and function of the Inspectorate of Prosecution in Scotland. (The IPS is the independent inspectorate for the COPFS.)

The inquiry will not consider the COPFS's two other roles of establishing the cause of sudden, unexplained or suspicious deaths or investigating allegations of criminal conduct against police officers, except in relation to the general issue of whether the COPFS has the resources it needs to carry out its purpose.

3. The Committee issued a [call for evidence](#), with a closing date of 19 October 2016. All [written responses](#) to the call for evidence can be found on the Committee's [inquiry page](#). To date over responses have been received.

#### Committee consideration

4. As the part of its inquiry the Committee visited the Lord Advocate in Chambers Street on 20 September 2016 and met with the Lord Advocate, the Solicitor General, the Crown Agent and various staff from the COPFS.

5. On 4 October 2016 the Committee met with individuals who had experience of the criminal justice system as victims and witnesses and heard of the difficulties they faced during the process. Notes of the meetings are available [here](#). Two of the notes are currently being agreed with the witnesses and will be published once they have agreed the content.

6. The Committee agreed to begin its formal evidence taking by hearing from two panels at its meeting today. The first panel consists of representatives from SACRO, Scottish Women’s Aid, Rape Crisis Scotland and Victim Support Scotland. The second panel is made up of representatives from the Law Society of Scotland, a representative from each of the Glasgow, Edinburgh and Aberdeen Bar Associations and from Airdrie Society of Solicitors. Written submissions from the witnesses can be found at Annexe A to this paper.

*Timetable*

7. The Committee’s future consideration is set out below—

Meeting on 1 November	Community Union (G4S) Circle Families Outside Criminal Social Work (tbc)
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## Written submission from Rape Crisis Scotland

Rape Crisis Scotland welcomes the opportunity to provide evidence on the role and purpose of the Crown Office and Procurator Fiscal Service.

### Introduction

1. Since the review of the investigation and prosecutions of sexual offences in 2006, significant changes have been made to how sexual offences are prosecuted in Scotland. There is now a specialist team of dedicated prosecutors in the National Sexual Crimes Unit who prosecute all High Court sexual offence cases. An Expert Advisory Group on Sexual Crime has been established by the Crown Office, which Rape Crisis Scotland and Children First are represented on. We have also had successive law officers who have publicly stated their commitment to improving the prosecution of sexual offences. Although we outline in our evidence issues and concerns raised by complainers about their experience of the prosecution process, Rape Crisis Scotland would like to acknowledge the significant dedication and skills amongst many COPFS staff in prosecuting this often complex area of crime.

### Communication with complainers

2. One of the most common concerns raised by complainers we are supporting is the lack of information about the progress of their case. The previous Solicitor General undertook a comprehensive Victims Review which considered, amongst other issues, the question of communication with complainers. We look forward to hearing the outcome of this review. Keeping complainers informed and updated is a key means of reducing distress and uncertainty, and minimising the possibility of victim withdrawal from the prosecution process. Our experience is that more needs to be done in this area.

3. There has been some recent criticism by the Faculty of Advocates that the Crown is too close to complainers / victims. This is not borne out by our experience. It used to be the case the rape complainers would go into court to give potentially very difficult and traumatic evidence and not know which lawyer was the prosecutor and which was the defence. This is not the way to secure best evidence, and returning to this would be a seriously retrograde step.

### Decisions to prosecute & delays in cases proceeding

4. It remains the case that the majority of rapes reported to the police do not make it to court. In 2014-15, 1,901 rapes and attempted rapes were reported to the police, 270 rapes and attempted rapes were prosecuted and there were 125 convictions. We need much better data relating to rape and the justice process, and better information about the reasons for cases not proceeding. The most common explanation, however, which complainers we are in contact with are given for cases not being prosecuted is lack of corroboration.

5. Rape complainers report to us that they are experiencing significant delays in finding out if their cases will proceed to court, particularly in prepetition cases. Survivors

tell us that they are going significant periods of time without communication from COPFS and are unaware of what is happening with their cases. This is particularly difficult for survivors where the case is prepetition, where there are no bail conditions in place. Complainers often think that their case has been dropped, and may be unaware that the accused has been charged or that enquires are ongoing.

### **Privacy issues – use of sexual history and character evidence and access to complainers' sensitive records**

6. There are long standing concerns about the use of sexual history and character evidence in sexual offence trials. The most recent evaluation of the provisions in place in Scotland to restrict evidence of this nature took place 10 years ago, and found that a significant amount of sexual history and character evidence was still being admitted. A summary of the key findings of the evaluation is here: [tiny.cc/jcc2fy](http://tiny.cc/jcc2fy)

7. We do not have a clear picture of the current situation. Following concern about the use of complainers' medical records in rape and abuse trials, the Scottish Government undertook a data counting exercise in the first 3 months of 2016. They found that during this period there were 57 applications to lead sexual history or character evidence in trials in Scottish courts. 51 of these applications were unopposed. 43 were granted in full, and 5 in part. On the face of it, the very low level of opposition to these applications, and their high success rate, is worrying, but we need proper research to analyse what type of applications are being made and approved. We need to know whether or not the law is protecting rape complainers in the way the Scottish Parliament intended when they passed the legislation. There is a clear need to commission an up to date evaluation of the provisions in the Sexual Offences (Procedure and Evidence) (Scotland) 2002 Act.

8. In a recent judicial review<sup>1</sup>, Lord Glennie found that access to a complainers' sensitive records represented a significant breach of privacy, and that complainers should have a right to be told when the person she has accused of abuse makes application for her records and a right to be heard on that application.

9. In our experience, these records are frequently being sought to look for mental health issues. Many complainers experience attempts to access their private records as a significant violation of their privacy which adds considerably to the stress and upset of their interaction with the criminal justice system. The prospect of having their personal or private lives subject to scrutiny acts as a direct deterrent to complainers reporting what has happened to them to the police. Where they do report it, it can add considerably to the trauma and sense of violation experienced by them.

10. Clear rules needs to be put in place governing access to medical or other sensitive records. A complainer must be told when an application is made for her records, and informed that she has a right to oppose this, to seek legal advice and be represented at any hearing where this is decided on. This process should apply irrespective of whether it is the Crown or the Defence who wish to access her records. In cases where it is the Crown who wish access to a complainers' medical or other sensitive records, we consider that complainers should be signposted to the Scottish Women's Rights Centre or other legal advice.

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<sup>1</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=2af906a7-8980-69d2-b500-ff0000d74aa7>

## The trial

11. It remains the case that rape complainers continue to speak of giving evidence in rape trials as being a violating and traumatic experience. While we acknowledge that evidence needs to be tested, and that giving evidence of this nature is always going to be difficult, we consider that more can be done to alleviate any unnecessary distress caused to the complainer. The proposals in the Evidence & Procedure Review provide a very encouraging outline of how to improve the process of obtaining evidence from children and other vulnerable witnesses, and we are very much in support of the approach being recommended.

12. In the meantime, however, we consider that more can be done to protect complainers giving evidence in rape trials. Everyone in the courtroom, in our view, has a responsibility to ensure that complainers are not subjected to unnecessarily bullying or harassing questioning. The Lord President has made a number of comments in recent judgements<sup>2</sup> about the need to protect complainers from inappropriate questioning. While the judiciary clearly have a responsibility to intervene if questioning becomes inappropriate, in our view at times the Crown could take a more proactive role in protecting rape complainers in court.

Rape Crisis Scotland  
19 October 2016

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<sup>2</sup> for example see

[http://www.heraldscotland.com/news/13582843.Judge\\_calls\\_stop\\_to\\_prolonged\\_questioning\\_of\\_rape\\_victims\\_in\\_court\\_after\\_woman\\_called\\_malicious\\_vindictive\\_liar/](http://www.heraldscotland.com/news/13582843.Judge_calls_stop_to_prolonged_questioning_of_rape_victims_in_court_after_woman_called_malicious_vindictive_liar/) for coverage of the Dreghorn cas

## Written submission from Sacro

### Introduction

Sacro has been asked to contribute to the consultation on the role and purpose of The Crown Office and Procurator Fiscal Service. Our response below provides specific examples to back up our views. We have given particular feedback around issues in relation to domestic abuse, restorative justice, diversion from prosecution, prosecution of young people and honour based violence.

*1. Please outline your views on the overall efficiency and effectiveness of the COPFS in its core role of considering reports about crime from the police and bringing prosecutions. Are there ways in which the services provided by the COPFS could be improved – for instance, through increased use of technology, further reforms to criminal procedure, or better case management? If so, do those changes also bring risks, in terms of the overall interests of justice or of access to justice (bearing in minds the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc).*

### Domestic abuse

Domestic abuse is a complex and multi-faceted issue, and the solutions are not always simple. In our experience of supporting victims of domestic abuse we feel that there are improvements that could be made to the Joint Protocol on Domestic Abuse between the COPFS and Police Scotland to ensure that the interests of victims of domestic abuse can be met. At times it can appear that pro-arrest and presumption in favour of prosecution requirements within the joint protocol is so dominant that it diminishes the ability and autonomy of individual prosecutors to make a judgment on the best disposal for individual cases, based on individual circumstances. Increased discretion is imperative to allow individual PFs to make decisions that are relevant, dynamic and responsive to the best interests of those affected. This may include diversion of some perpetrators of domestic abuse to group programmes for low risk cases.

Sacro was involved in running a pilot project in two areas, for perpetrators of domestic abuse. One barrier which we experienced was speedy access to individuals while still in custody and prior to a PF liberation. The sooner in which engagement is made, the better the outcomes are likely to be in terms of future reoffending in a similar manner.

### Diversion from Prosecution

In general the targets associated with Diversion from Prosecution (DfP), where a decision is reached and a referral made within fourteen days is consistently achieved. However there can on occasions be a lack of knowledge of what DfP programmes are available locally. It is acknowledged that COPFS previously took positive steps to standardise awareness by surveying local authorities, although it is not known how widely spread this engagement was. Sacro staff report that this has appeared to miss some geographical areas and as a result DfP opportunities have not always been consistently offered locally.

This is aligned to the perception that there is more of a focus on process and criteria rather than a person-centred approach which would be more consistent with “Whole Systems”

and with partner agencies across Police, social work and third sector. It is noticeable in some areas that inconsistency can result in an increase in FWOs, fines and warnings and decreased use of diversion services, in particular restorative justice for young people, aged 16-18.

It is also worthy of note that over the past 12 months, Sacro, although contracted as the service provider in certain areas, has experienced a significant reduction in referrals for restorative diversion. A significant number of cases for this age group have been referred to Criminal Justice Social Work for consideration of alternatives.

Whilst it may have been the intention that Criminal Justice Social Work would take responsibility for identifying suitable RJ diversionary opportunities this has not happened in a manner that is efficient and effective for all partners.

It is the view of staff that this reduction in referrals has coincided over time with the move from local case management to the introduction of the COPFS centralised Initial Case Processing Teams (ICPT). It is believed that in this transition local knowledge has been diminished and local collaborative working has become restricted. Where a large number of PFs are marking papers, it is difficult to know if they are fully conversant with local services.

### **Prosecution of Young People**

Communication between Sacro and COPFS has always been positive and constructive, but noticeably increasingly limited on a local level since the introduction of Initial Case Processing Teams. Prior to restructure of COPFS, local Sacro services providing Court Support and Social Work were provided with a case list or verbal updates from the local Procurator Fiscal Depute once cases had been marked. This is not so readily available post restructure.

As previously highlighted there could be more of an emphasis on diversion as an alternative from prosecution. There is a risk that a lack of consistency will undermine the positive developments gained through the Whole Systems Approach. The loss of local direct contact has impacted on a person centred approach and positive outcomes for young people.

Suggested solutions include the creation of a Service Level Agreement to promote information sharing and improved awareness by all stakeholders of the organisational structures of partner agencies, including identifying developed routes for more effective communication.

### **IT Provision**

A technical capability to immediately provide and share court disposals amongst partners electronically would greatly increase the efficiency of services such as Community Payback Orders (CPO) where the ability to identify referred parties and promptly engage with them is key. At present the time taken to garner this information distracts valuable resource from front line delivery.

*2. Please outline how well you consider the COPFS works with other stakeholders in the criminal justice system, so as to provide a —joined up and complementary service that helps meet the ends of justice. Other stakeholders might, for instance, include the police, defence lawyers, the courts, the prison service, criminal justice social work, and third party organisations working with victims or offenders.*

### **Domestic abuse**

COPFS has shown a commitment to including stakeholders in service improvement. This is evident in the Domestic Abuse Independent Panel Review Group, meeting twice a year to review how real cases have been handled in relation to domestic and sexual abuse. This evidences a commitment to accountability and continuous improvement of working practices, through the involvement of stakeholders.

The appointment of a specialist prosecutor for domestic abuse in Scotland has also bolstered stakeholder engagement across the criminal justice system.

### **Stakeholder Engagement**

The move by COPFS to Initial Case Processing Teams has at times impacted on local knowledge and affected the benefits of meaningful personal professional relationships. It is the belief of those directly involved in service delivery that communication could be improved between partners and as a consequence opportunities are being missed to divert offenders from the criminal justice process.

*3. Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its core role effectively? And is it appropriately —future-proofed – for instance to deal with new technologies available to criminals, changes in the overall profile of crime in 21st century Scotland, or withdrawal from the European Union? If not, what additional capacities does the COPFS need?*

### **Honour Based Violence**

In supporting victims of HBV insight into the specific culture/religion to which victims subscribe is essential. This is instrumental in understanding family/community structures, as well as particular risks present in individual cases, to ensure parties concerned are supported appropriately.

This in-depth knowledge is largely confined to smaller organisations, teams (including teams within Police Scotland) and Service providers (Sacro) with a specialised interest in supporting communities affected by these issues. Awareness by statutory services remains limited, Sacro, through Bright Choices has offered training and consultancy to the Judicial Institute for Scotland and the Scottish Courts Service on rulings which involve elements of Honour Based Violence and Domestic Abuse with a potential ‘honour’ element or motivation. There is underreporting of honour based violence to the police due to fear or prejudice, resulting in very few prosecutions sought in Scotland.

A court ruling on 3 March 2015, case of AS, for whom a Forced Marriage Protection Order [FMPO] was sought by the Police and Social Services provides a helpful case study. Numerous Risk Factors were present including the family’s and extended family’s tradition

of arranged marriages, refusing these arrangements lead to emotional abuse and blackmail in several cases; the unexpected engagement/marriage of family members to other family members/friends during holidays to their home country; the arranged marriage of one of the protected person's siblings who had mental health issues and learning disabilities, rendering legally incapable of consenting to a marriage, among others. For a full report on the ruling please see:

<http://www.scotcourts.gov.uk/search-judgments/judgment?id=87a9cca6-8980-69d2-b500-ff0000d74aa7>

*4. How well does the COPFS respond to the needs of victims of crimes and to witnesses (especially vulnerable witnesses) in criminal cases and meet its legal obligations towards them?*

### **Domestic Abuse**

In relation to supporting victims of domestic abuse, COPFS has always been receptive of reports from domestic abuse services in the Third Sector. This includes reports at sentencing and any requests for a sentence to include a criminal non-harassment order. The Victim Information and Advice (VIA) service is effective in ensuring that these reports are progressed to the Procurators Fiscal.

### **Restorative Justice**

There is an opportunity for the COPFS to better respond to the needs of victims in RJ/Conflict resolution services through consultation with the victim prior to making a decision on whether to prosecute, particularly in summary cases. Due consideration could be given in appropriate cases to directing the police and other reporting agencies to include in case reporting a section asking if the victim would be willing to undergo an RJ process and/or accept reparation in lieu of prosecution in court (financial, task based, offender agreeing to accept help to change the behaviour and address other influencing factors etc.). This is not currently standard practice and if included would reduce the caseloads and volume of work for PF's as well as reduce the number of offenders and witnesses required to attend court.

It is the view of Sacro that there are instances where it would better serve the public interest by referring offenders to bespoke services to address the cause of the behaviour and meet specific needs in tandem with a restorative justice process where a victim is involved and is supportive of the process.

*5. The Inspectorate of Prosecution in Scotland is the independent, statutory inspectorate for the COPFS. What is your awareness of the existence and role of the IPS and of its effectiveness in carrying out that role? How effective has it been in carrying out its role? Does it appear to have the resources it needs?*

Those involved in overseeing the operational delivery of Sacro front line services are not engaged with the role of the Inspectorate of Prosecution in Scotland.

Sacro  
October 2016

## Written submission from Scottish Women's Aid

### Introduction

Scottish Women's Aid ("SWA") is Scotland's national domestic abuse agency.

We play a vital role in campaigning and lobbying for effective responses to domestic abuse and provide advice, information, training and publications to our 37 member groups and to a wide variety of stakeholders. Our members are local Women's Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

At the national level, we operate the National Domestic Abuse and Forced Marriage Helpline and work with the police, courts, prosecution, Scottish and Westminster Governments and other partners to end domestic abuse.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need and an appropriate response from the civil and criminal justice systems.

SWA welcomes the opportunity to comment on the important matters raised by this consultation and to voice our support for a system of prosecution that is fully "domestic abuse competent" and supports women, children and young people to fully participate.

### Strategic direction of COPFS in relation to domestic abuse

SWA considers that the strategic approach to domestic abuse taken by the Crown Office and Procurator Fiscal Service ("COPFS") is positive, progressive and follows the blueprint of international instruments detailing affirmative approaches by State parties and agencies toward addressing violence against women.<sup>3</sup>

We very much support the ongoing and considerable reforms in COPFS policy that demonstrate an organisational understanding of the causes, effects and impact of domestic abuse on women, children and young people. This process began through the commitment championed by Dame Elish Angiolini QC during her role as Solicitor General, and then as Lord Advocate, and has been strengthened by successive Lords Advocate and Solicitors General as well as the Crown Agent and other COPFS strategic managers.

Policy developments such as the Joint Protocol on the investigation and prosecution of domestic abuse, the appointment of their National Procurator Fiscal for Domestic Abuse and training for COPFS staff demonstrate a high-level of organisational commitment to the prosecution of domestic abuse; senior staff at COPFS have worked closely and

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<sup>3</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence; Council of Europe 2011  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>  
Convention on the Elimination of all Forms of Discrimination Against Women  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>  
UN Convention on the Rights of the Child <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

collaboratively with SWA to improve individual and organisational understanding of the issues.

### **Implementation of policy**

However, SWA are not seeing this strategic approach reflected on the ground in the day-to-day response from COPFS to women, children and young people experiencing domestic abuse.

We applaud moves by COPFS to reorganise in order to protect frontline prosecution services, but what seems to be lacking is adequate infrastructure both to support change and implementation of new policies and to sustain that improvement once achieved.

### **Specific barriers for women, children and young people experiencing domestic abuse**

Policy reform within the criminal justice system, particularly through the Evidence and Procedure Review is focussing on allowing victims and witnesses, and thus women and children, to engage positively with the criminal justice system and give their best evidence.

To progress and embrace this agenda, the COPFS must be able to

- make consistent and effective assessments of police reports of domestic abuse-related offending, including evidential issues, to address any matters likely to hinder or delay prosecution, where appropriate
- Routinely provide, or facilitate access to, information, support, advocacy and protection, particularly in line with statutory obligations under the Victims and Witnesses (Scotland) Act 2014.

It is therefore vital that both the above mentioned policy reform and COPFS strategic commitment is translated into informed and positive practice responses to support women and children engaging with the COPFS at a local level.

To this end, examples of good practices from COPFS that would benefit women and children if applied consistently are

- Routine communication and engagement with women around, firstly, bail conditions, any changes to these and the release of the perpetrator; also, on the process before the trial, particularly to dispel myths and misconceptions around the role of the Crown and the mechanics of the trial. It is important that women feel “prepared” and know what to expect and when.
- Timely and clear communication with victims and witnesses on decisions not to prosecute; on whether a case is or is not proceeding to trial; on outcomes of trials and sentencing disposals.
- Prosecutors meeting victims and witnesses and prosecutors being given adequate time to fully acquaint themselves with the case before meeting the victim and attending the trial diet.
- Appropriate, timely and effective assessment of women and children’s support and safety needs throughout the process so that they are generally informed around giving evidence, including the use of special measures, and are made to “feel safe” before, during and after giving evidence

- Prosecutors intervening to prevent inappropriate, aggressive and demeaning cross examination by the defence.
- Continuity of VIA and prosecution staff to build trust and confidence between them and victims and witnesses
- Certainty in terms of trial dates. “Floating trial dates” and “churn” in relation to postponement of trials and the eventual commencement of the trial was also cited as a source of concern and frustration.

We are aware that addressing women’s views and concerns around “*not having a greater role in the proceedings*” and that the prosecutor should be “*in their corner*”, lies outwith the role of the COPFS. Similarly, issues with the quality and nature of physical special measures available in court and the setting of court dates may also be beyond their control. It is, at times, difficult to identify where responsibility lies for these arrangements. This highlights the importance of “joined-up” working and communication between COPFS, Police Scotland and the Court Service as well as local advocacy and support services such as Women’s Aid groups. Joint working takes time, a resource that appears to be in very short supply.

### **Additional concerns around pressure on COPFS’ role**

SWA is also very much aware of the external pressures and public criticism levelled at the COPFS service from those who feel that the COPFS is no longer maintaining a “robust independence” in terms of their engagement with victims and witnesses and that somehow “*the balance has gone wrong in the system between the “needs and wishes” of victims of crime and the independent role of the prosecution.*

The hallmark of a democratic, representative and fair criminal justice system is one that protects its most vulnerable, be they accused, complainers or witnesses. It is just and proper that in the exercise of their prosecutorial duty, the COPFS’ role encompasses not only its human rights obligations but also those imposed upon both them and the State by the EU Directive on the rights of victims in criminal proceedings, intended to ensure participation of victims and witnesses, and which is incorporated in Scots law via the victims and witnesses legislation referred to above.

It is crucial for the proper execution of the COPFS role, the preparation of their case and the presentation of that case before the court that prosecutors meet victims and witnesses, assess their needs in terms of providing evidence and ensure that they are supported to do so. This does not conflict with COPFS’ independence as the impartial Crown prosecutor acting in the public interest. Indeed, it is very much in the public interest that the participation of victims and witnesses in the criminal justice process is supported, respected, valued and encouraged.

Women, children and young people have, for too long, been essentially re-victimised and devalued in their interaction with the criminal justice system and its agencies. The COPFS has carried out wholesale reform in its policy and practice response to violence against women and it is vital that it is properly resourced to allow it to turn admirable policy into effective, consistent and accountable practice.

## **Conclusion**

In summary, a properly resourced COPFS service is necessary to make effective the transformation from domestic abuse strategic policy to every-day practice. Within this, the benefits of a Scotland-wide “academy” approach to training of COPFS staff, prosecution and VIA would support the embedding of the national strategy at local level.

Scottish Women's Aid  
19 October 2016

## Written submission from Victim Support Scotland

Victim Support Scotland (VSS) is the largest charity supporting people affected by crime across Scotland through the provision of practical help, emotional support and essential information. VSS welcomes the opportunity to provide evidence to the Justice Committee as part of the inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS), as both an advocate for the best interests of victims and witnesses, and a partner and stakeholder of the COPFS.

### Efficiency and effectiveness

VSS is not in a position to judge the *overall* effectiveness of the COPFS in its core role of considering reports from the police and bringing prosecutions, but can identify some ways in which we believe the COPFS could be more efficient and effective in carrying out this role.

In order to be truly effective, the COPFS must engage with witnesses to ensure that they are familiar with all of the evidence in advance of trial and to prevent avoidable issues. A decrease in the use of precognition and a general lack of contact with witnesses before trial has in some cases resulted in unsatisfactory outcomes, through the inability for witnesses to give their best evidence. In some cases, a lack of preparation by Fiscals in advance of trial results in adjournments when the case does call. The impact of churn on victims and witnesses is severe, with many witnesses losing out financially and experiencing additional stress and anxiety. VSS has also identified that it can be common for the COPFS to fail to countermand witnesses, which means that they still attend court only to find out that the case is not calling that day. This stress, anxiety and inconvenience caused to victims and witnesses, who will have mentally prepared themselves to give evidence, is completely avoidable. We believe that consideration should be given to the use of technology to cite and countermand witnesses, as this would ease pressure on the COPFS in sending these out manually or through the use of police officers.

### Working with stakeholders

VSS: There has been in place a long-standing (>10 years) tripartite information and referral protocol between COPFS, SCTS and VSS, which enables the provision of advance notification of vulnerable victims and witnesses who need support. We have noted that the key roles and responsibilities as set out in the protocol are no longer being routinely followed by VIA. Since COPFS disbanded the VIA national team 2-3 years ago, there has been a decline in the consistency of practice across the VIA service. Ensuring effective communication from the COPFS centre to local VIA teams has been problematic due to their structures. Although we note proposals for a revised structure following recent appointment of David Harvie as Crown Agent, to date this does not appear to have manifested in any noticeable improvements.

Although COPFS policy staff do circulate instructions to VIA staff, our experience remains that these are not acted upon. For example, compliance reminders are often sent by policy staff to ensure that VIA refer vulnerable witnesses to the Witness Service 10 days in advance of trial. This allows us to contact witnesses and offer our help and assistance such as court familiarisation visits; this enables witnesses to experience the actual court room, provides an explanation of key personnel in advance of trial and helps them to give

their best evidence. If VSS do not receive referrals in the required time, we are unable to plan our resources effectively, which can affect the support that is available to witnesses on the day. Additionally, VIA staff are meant to contact vulnerable witnesses themselves to explain their role and our role. Increasingly, this does not occur and the only way victims and witnesses can receive this information is through contact with VSS.

Referrals from VIA to Witness Service (WS) involve the use of a designated 'referral form' through email. This hugely bureaucratic process is a duplication of recording by VIA and WS staff, which results in less time for contact with victims and witnesses. In addition, due to the manual process involved, mistakes are prone to be made. In raising this with COPFS, we have suggested the development of a technological solution along the lines of the police referrals to VSS, which come directly into our secure system. So far however, this has not been possible.

Issues raised at local level between VSS and VIA staff can sometimes be resolved through regular tripartite meetings between VSS, COPFS and SCTS. However, there is disparity across the country in terms of how well VIA work in partnership with VSS. Additionally, VSS staff can find it very difficult to contact VIA due to the centralisation of communications (through the COPFS Enquiry Point which has replaced previous named contacts with direct dials). This in turn impacts on our ability to effectively advocate for witnesses.

Defence: Adjournments are often also caused by a lack of timely disclosure by the COPFS to the defence, with evidence sometimes seen for the first time by the defence at the time of the trial.

SCTS: We believe that the marking and allocation of cases could be better coordinated between COPFS and SCTS to avoid too many witnesses being cited for cases that have no realistic prospect of being heard. This would reduce the number of instances in which witnesses are turned away from court to be re-cited to give evidence at a later date.

## **Resources and skillsets**

As previously indicated, in order to carry out their core role effectively COPFS must engage with victims and witnesses in advance of trial. A deficiency in resources available may be linked to: fewer precognition officers; a lack of assessment for the appropriate special measure that should be used in cases of deemed vulnerable witnesses; a lack of contact with non-deemed vulnerable witnesses in order to assess their vulnerability; a lack of contact to confirm a not guilty plea at intermediate diet; and a change from telephone contact with witnesses to contact by letter. We also have concerns around resource allocation and deployment of staff, having experienced gaps in VIA staffing over sustained periods.

When it comes to communicating with victims and witnesses, the importance of sensitivity and an understanding of the impact that the information will have on them cannot be understated. Unfortunately, communications by COPFS are often difficult to understand and can be provided without the respect, care and sensitivity that victims deserve.

## Victims and witnesses

The needs of victims and witnesses and the associated legal obligations placed on COPFS fall into the following categories: information and communication, and protection.

### *Information and communication*

The provision of information is fundamental in enabling victims to understand the process of which they are a part, and for minimising uncertainty and anxiety. The VIA service provided by COPFS provides information and advice to child victims and victims of crime in cases of domestic abuse, hate crime, sexual crime or where it is likely that a trial will involve a jury. Victims who do not fall under the auspices of VIA are not provided with proactive information on their case, such as whether it is going to court, until they receive a citation many months later (if at all). When an alternative to prosecution is used, victims are not provided with this information unless they request this, using their right under section 6 of the Victims and Witnesses (Scotland) Act 2014. Unfortunately, very few victims are aware of this right, and the process used to access this information is bureaucratic, online only and difficult to navigate. On the other hand, positive reports have been received as to how these requests have been handled when made.

When trying to contact VIA directly, victims have told us of their frustration at the length of time that it takes for calls to be answered, if at all.

COPFS have a legal obligation to ensure that their communications are as clear and easy to understand as possible<sup>4</sup>. The standard letters used by VIA to provide information to victims and witnesses are overly lengthy and too complex, with little explanation of terms used; feedback received from our service users is that the letters are confusing, and many witnesses contact us to ask about subjects covered in the documents sent by COPFS. Many victims and witnesses are unclear of what is happening next, or what the outcome of their case was, even though they have received communications about this from VIA.

Although there have been some positive reports of individuals being very impressed with the compassion they have received when cases have been adjourned and there is no date yet set, we find in the majority of cases that witnesses who face this situation are often left uninformed. Although in some cases Fiscals endeavour to explain their decisions to victims and witnesses, this often does not happen due to time restraints. This is particularly true when it comes to dropping charges or accepting not guilty pleas. Inaccurate information is also sometimes provided by COPFS, which creates confusion, anxiety and often fears for their safety.

COPFS must also take into account any personal characteristics which might affect the victim's ability to understand or to be understood<sup>5</sup>. In most occasions, if COPFS are aware of any barrier which may affect a victim's understanding (such as a learning difficulty or health issues), they provide this information on their referral to us. Some issues do occur however, such as in relation to language needs.

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<sup>4</sup> Section 3E of the Victims and Witnesses (Scotland) Act 2014

<sup>5</sup> Also Section 3E of the 2014 Act

COPFS generally meets its duty to ensure that victims are provided with interpretation and translation services where required<sup>6</sup>. On most occasions, translators are present for trial dates. However there have been times when they have failed to arrange for a translator, the wrong dialect of translator has appeared, or it is realised that more than one interpreter is required, which can result in delays when this happens on the day of the trial. In addition, some of our service users where English is not their first language have been contacted in English with no interpreter used over the phone.

Our experience is that victims are not made aware of the rights available to them, such as the right to obtain information<sup>7</sup>, or the right to request a review of a decision not to prosecute<sup>8</sup>. Moreover, the form for requesting a review is difficult to access. Using this right has resulted in positive outcomes for some victims, with prosecutions taking place.

### *Protection*

As regards their duty to take reasonable steps to enable a victim to avoid contact with the offender<sup>9</sup>, COPFS frequently make VSS aware when there may be an issue with a witness seeing the accused, even though the safety of witnesses within the court building is not the responsibility of VSS. There have been occasions in which the accused has been let out of the building before the victim and witnesses, resulting in intimidation and further offences being committed. We believe there is a duty of care in relation to the safety of witnesses upon those who cite witnesses to give evidence and those who run the court building, and measures should be in place to ensure that this type of contact is avoided.

As regards the provision and arrangement of special measures, COPFS have a duty to have regard to the best interests of the witness and to take account of any views expressed by the witness<sup>10</sup>, and to take reasonable steps to carry out an assessment to determine whether a witness may be vulnerable<sup>11</sup>. Although in some cases VIA work well to ensure that the most appropriate measure is used (for example, PFs consult with WS and have changed the measures from a screen and a support to CCTV and a supporter), our experience is that in general, the COPFS are unable to fulfil these duties, resulting in a failure to protect victims and witnesses from secondary victimisation.

Since the implementation of the 2014 Act provisions on automatic special measures for child and deemed vulnerable witnesses in September 2015, there has been a move away from the assessment of witnesses' vulnerability and discussion with them around their needs for support and protection. The time and resources of VIA seem to be taken up with the additional administrative work that has resulted from the automatic entitlement to special measure for specific categories of witnesses. The result is that many witnesses are not being provided with the measures that they need to support and protect them from the trauma of giving evidence. The Witness Service identifies many individuals who are in fact vulnerable, but unfortunately this happens at a late stage, very often on the day of the trial, resulting in an inability for them to access the support they need.

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<sup>6</sup> Section 3F of the 2014 Act

<sup>7</sup> Section 6 of the 2014 Act

<sup>8</sup> Section 4 of the 2014 Act

<sup>9</sup> Section 9D of the 2014 Act

<sup>10</sup> Section 271E of the Criminal Procedure (Scotland) Act 1995

<sup>11</sup> Section 271BA of the 1995 Act

We recognise that many of these issues may be attributable to the additional resources and skillsets required to implement a system in which the needs of victims and witnesses are truly at its centre.

Victim Support Scotland  
19 October 2016

### **Written submission from Aberdeen Bar Association**

The ABA would wish at this early stage to raise and comment upon one issue that is of profound importance and significance in any investigation or inquiry regarding COPFS. It relates to the question discretion.

Procurator Fiscal Deputes should be given the trust, authority and support, to make decisions, based on their discretion, as lawyers. They should not be bound by Government policy or dictated to in terms of apparent universal policy or strategy regarding specific types of criminal conduct.

For a truly independent prosecution service, acting in the public interest, lawyers, whether trainee Deputes, propelled into Court from their second year and deemed qualified and experienced enough to conduct Sheriff Court matters, or relatively senior Deputes, should be able to make decisions of their own.

Specifically, they should be able to exert their judgment, in deciding what should and shouldn't be prosecuted, and where they can channel and focus the resources they have, rather than being dictated to by others, far removed from the reality of decision making at the coal-face; dealing with Courts, Sheriffs and Judges, witnesses, and defence lawyers. We in the Aberdeen Bar recognize the enormous stress Deputes in Court face, and we empathise when intelligent, and fair-thinking Procurator Fiscal Deputes are bound by what are often perceived to be political concepts and policies, which constrain the power of the PF to get on with the job in hand; that is to focus on ensuring justice is done.

Most importantly, PF Deputes should be allowed to be lawyers. Deputes should be given the freedom to assess and evaluate each case individually, and on its own merits.

Give PF Deputes the respect their title merits, by allowing them to act truly independently of other agencies, and have more discretion in what they can and cannot do, will allow them to become more effective and efficient in carrying out their core role.

The Aberdeen Bar Association has a strong, respectful and well-established working relationship with the COPFS in Aberdeen, and will always look for ways we can build upon that relationship based on mutual trust, and courtesy.

Aberdeen Bar Association  
19 October 2016

## Written submission from the Edinburgh Bar Association

*1. Please outline your views on the overall efficiency and effectiveness of the COPFS in its core role of considering reports about crime from the police and bringing prosecutions. Are there ways in which the services provided by the COPFS could be improved – for instance, through increased use of technology, further reforms to criminal procedure, or better case management? If so, do those changes also bring risks, in terms of the overall interests of justice or of access to justice (bearing in minds the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc)?*

Before beginning, it is important to acknowledge the limitations in the scope of this response. Although members deal with cases in courts up and down the country, the overwhelming majority of our business is dealt with at the Sheriff and Justice of the Peace Courts of Edinburgh. This means that most of our dealings with COPFS are local and the opinions voiced herein relate to experiences in this jurisdiction. There are parts of COPFS – for example the summary and “sheriff and jury” (sheriff court level solemn business) teams – which individual solicitors deal with very frequently, and therefore can comment on fully. Others – for example the homicide team – are less commonly encountered and so little of utility can be offered. Hopefully the opinions voiced herein will be of assistance to the committee.

Overall, the E.B.A.’s impression of COPFS is of an organisation struggling manfully in difficult circumstances. The problem that displays itself in every department is understaffing. Very few of the specific issues raised in this response could not be solved, or at least materially improved, with the assistance of additional personnel. Little criticism is made by members of individual procurator fiscal deputies or administration staff members. Frustration often has its root in something as simple as failure to return phone calls or respond to letters. In Edinburgh, it is more or less understood that a first letter to the Crown regarding a summary matter will never be answered. Frequently several letters regarding a single issue – perhaps a missing witness statement – can be sent, with no response ever being received. In the past, solicitors would send written requests to COPFS for disclosure in summary cases by Royal Mail, DX or Legal Post. COPFS now discourages this and prefers that pro-forma handwritten letters are completed and submitted to the P.F. depute at the first calling of the case in court. The reason? Mailed letters simply don’t get matched up with the correct sets of prosecution papers, resulting in failure or delays in disclosure (of which more is said below). The knock on effect of delayed or failed disclosure is that courts are clogged up with more procedural-type hearings and trials are often adjourned - all because COPFS does not have enough staff on the administrative side to deal with the volume of mail that they receive. The staff that the Edinburgh office does have are extremely helpful in the main, but it is clear that there just are not enough of them.

The same situation exists in relation to telephone calls. In recent years, COPFS has moved to a centralised national switchboard, through which all external queries are supposed to be routed. Solicitors making enquiries through the switchboard routinely hold waiting for first contact with an operator for lengthy periods. Once through, and having provided details of the nature and purpose of the call, the operator will seek to connect the agent with the relevant person or department. At this point the solicitor will usually be advised that either nobody at all is free in the relevant department or that all of the P.F.

deputes are in court. If a solicitor wishes to make contact with a P.F. depute, the only real way is to have dealt with that particular depute on a prior occasion and for them to have provided their direct dial telephone number (which they are always happy to do). The problem is not a lack of willingness to assist, it is a lack of people.

Staffing issues have a real effect on witnesses, victims and accused persons. It is not a question of what is convenient for defence solicitors. Take as an example a case where – as is increasingly common – a prosecution effectively stands or falls on the basis of CCTV evidence. An allegation of assault has been made. The accused person was intoxicated at the time of the alleged incident and cannot recall what happened. They wish to adjust a plea of guilty if, when disclosed, the CCTV evidence shows them committing the assault. Now: if the CCTV is ingathered by COPFS from the police in a timely fashion, and it does show that accused committing the offence, an early plea can be tendered. This has a number of positive effects, some of which are:

- i) The accused receives a reduction in the penalty imposed by the court as he has saved court time and avoided witnesses having to attend court to give evidence;
- ii) Witnesses in general have been saved the inconvenience and in some cases the distress of attending court;
- iii) The victim of the assault receives justice more quickly; and
- iv) Court time and money is saved by avoiding an unnecessary trial.

Needless to say, if the CCTV demonstrates that the accused did not commit the offence, then a trial may also be avoided if COPFS agree to discontinue proceedings. What happens if CCTV is disclosed late? Cases are regularly continued to trial without CCTV ever having been received by COPFS or shown to the defence. Witnesses are cited to attend trial to give evidence. The Crown are obliged to meet their expenses, regardless of whether the trial goes ahead or not. The CCTV is produced on the morning of the trial, watched by Crown and defence. Either a plea of guilty is tendered or the prosecution is discontinued. All of the benefits listed above are lost. Time and money is wasted. Justice is delayed.

Some problems relate specifically to the efficiency of solemn prosecutions at Sheriff Court level. As the committee will be aware, trials in such cases are grouped together to call within two week long sittings of the court. Essentially a court will be convened for a two week period (an “assize”) with a single P.F. depute assigned to conduct all of the trials in that court. The accused in each case will know only that his trial should call at some point during that assize. The P.F. Depute will contact the defence late in the afternoon on the day before they intend to start the trial, so that the accused can be advised to attend the following day. The solicitor will clear whatever obligations they have for the following day (and days thereafter, as appropriate) and attend to represent the accused. Unfortunately, when accused and solicitor attend in the morning for trial, it usually transpires that several other cases have been “called in” for trial. Numerous solicitors and accused will be present, unnecessarily. Given the pressure on court resources, it is well understood that there requires to be a back-up trial in case the priority matter unexpectedly cannot proceed. However, when it appears that five or even six “back-up” cases have been called in, it is clear that mismanagement is at play.

Disclosure is a serious issue in sheriff court solemn cases in the same way as for summary matters. In cases where an accused is on bail and a twelve month time limit is placed on the prosecution, many months will often elapse before disclosure of evidence is received. Letters may go unanswered. Cases may be continued to a trial and be adjourned at the end of the assize, on the express basis that there is insufficient time left for the trial to take place. It is a source of concern that many months later, prior to a second or even third attempt at running the trial, the Crown may seek to add further evidence to the lists on the indictment. Sometimes the evidence in question has been in the hands of the Crown since prior to the first trial assize, sometimes it is entirely new. Often it results in further enquiry being required of the defence and further delay and expense in the proceedings. Late disclosure of key evidence in solemn cases brings about the same negative consequences discussed above in relation to summary matters, but exacerbated by the greatly increased seriousness of the types of allegation being prosecuted and the potential penalties for the accused. Even where evidence is added or added and disclosed between shortly before the "first" trial, these effects are felt. Accused person can rightly feel aggrieved if advice from their solicitors changes late in proceedings because it has been based on a misunderstanding of the evidence occasioned by incomplete disclosure by the Crown. In part, all of this comes back to staffing levels. It appears to the Association that a large part of the preparation of solemn cases is left in the hands of non-legally qualified staff, without the necessary expertise or supervision to prevent problems like this arising.

These matters aside, the leeching away of the discretion of the procurator fiscal depute in court to take decisions on the prosecution is the greatest enemy to efficiency and effective management by COPFS. It is stated COPFS policy that in some types of case - predominantly matters of a domestic nature or involving an alleged aggravation of prejudice of some kind - the P.F. depute in court has no discretion as to whether or not to proceed with the case. This applies, it is understood, notwithstanding any proper professional views they may have formed based on the evidence available to them. This has to be a serious concern to the committee and the general public. This means that a P.F. depute in court would have discretion to discontinue an alleged serious, unprovoked assault involving a weapon (where the evidence was so flawed as to make that the correct decision), but not a charge involving a single utterance of racially offensive language in similar evidential circumstances. In cases where discretion does exist, there seems to be a culture of fear amongst deposes in exercising it. The common practice of employing P.F. deposes on short term contracts exacerbates this, as they do not want to be seen to "put their heads above the parapet". Where a discretion does exist, one way of encouraging its use is to give Deposes proper time to prepare courts and individual cases. Anecdotally, being given time to prepare a court in advance is considered to be a rare privilege rather than an essential step in the proper prosecution of crime.

The exercise of COPFS discretion in the sense described above involves the question of whether a case should be prosecuted/continue to be prosecuted. Association members also raise concerns regarding the exercise of discretion as to whether non-appearance warrants should be enforced by police officers or not. Where the court grants a warrant for an accused persons arrest at a hearing prior to conviction, COPFS have the power to withdraw the warrant from the police and fix a hearing at which the accused is invited to attend rather than being arrested. Historically, where a good reason (medically certificated ill health, bereavement and so forth), could be demonstrated to COPFS, they would arrange such an invitation. Stated policy is now that no such invitations should be

arranged. This can result in vulnerable people being arrested and held in custody unnecessarily, with all the distress that entails. Scarce police resources are also wasted.

*2. Please outline how well you consider the COPFS works with other stakeholders in the criminal justice system, so as to provide a —joined up and complementary service that helps meet the ends of justice. Other stakeholders might, for instance, include the police, defence lawyers, the courts, the prison service, criminal justice social work, and third party organisations working with victims or offenders.*

The Association's view of how well COPFS works with defence solicitors is dealt with in answering Question 1, above. A worry has been expressed by some members regarding the form in which disclosure is passed by police to COPFS. It may be that under guidance from COPFS to the police, these could be addressed. The worry relates to the disclosure of exculpatory evidence (evidence which would tend to exonerate the accused). In a small but notable minority of cases, exculpatory evidence appears to be disclosed to the defence later than evidence that is more incriminating. Often it requires more prompting. An example might be the disclosure of a single witness statement to the defence from a witness who gave two statements – with the later statement including some new information that is of assistance to the defence. Sometimes, where a question regarding some point is raised with COPFS by the defence, and that request is passed on to COPFS to police, a response comes back by way of a memo – rather than a witness statement. Memos are frequently not disclosed, whereas statements commonly would be.

It should be made clear as a positive that COPFS do take steps wherever possible to seek out the Association's views and to co-operate where possible. Semi-regular meetings are held between our office bearers and the management team at Edinburgh to try and trouble shoot the types of problem described in this response. A lack of resources, *inter alia*, often stymies these efforts however.

*3. Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its core role effectively? And is it appropriately —future-proofed – for instance to deal with new technologies available to criminals, changes in the overall profile of crime in 21st century Scotland, or withdrawal from the European Union? If not, what additional capacities does the COPFS need?*

The Association's view in relation to the resources available to COPFS are well laid out in answer to questions raised above. The remaining aspects of this question should properly be addressed by agencies on the prosecution side.

*4. How well does the COPFS respond to the needs of victims of crimes and to witnesses (especially vulnerable witnesses) in criminal cases and meet its legal obligations towards them?*

Again, this is considered to be a question best answered by those who work with COPFS on the prosecution side, for example the police, EDACS, the social work department and so forth.

*5. The Inspectorate of Prosecution in Scotland is the independent, statutory inspectorate for the COPFS. What is your awareness of the existence and role of the IPS and of its*

*effectiveness in carrying out that role? How effective has it been in carrying out its role?  
Does it appear to have the resources it needs?*

There is limited awareness of the work of the Inspectorate. Given the nature of its work, the Association does not have a view to offer on this subject.

Edinburgh Bar Association  
19 October 2016

## Written submission from Glasgow Bar Association

### Introduction

The Glasgow Bar Association (“the GBA”) was formed in 1959. The objects of the Association, as contained in its constitution, include the promotion of access to legal services and access to justice and to consider and, if necessary, formulate proposals and initiate action for law reform and to consider and monitor proposals made by other bodies for law reform. The GBA also offers legal education programmes and sponsors and supports legal education and debate at Scotland’s universities.

Today the GBA remains a strong, independent body. Its current membership level now exceeds four hundred, by far the largest Bar Association in the country. The GBA thanks the Justice Committee for the opportunity to make submissions in respect of this Inquiry and would encourage the Justice Committee to continue to seek its views on all legislative matters and issues impacting upon the criminal and civil justice system.

This response is prepared by the committee of the GBA having sought the views of our members who work daily in Glasgow Sheriff Court. Our response focuses primarily upon the effectiveness and efficiency of the Crown Office and Procurator Fiscal Service (“COPFS”) and how it works with defence solicitors in Glasgow, being major stakeholders in the criminal justice system.

We wish to acknowledge that our experience in Glasgow is that the Procurators Fiscal are working extremely hard, under significant pressure and that despite this, there is an excellent working relationship between Procurators Fiscal and the defence bar.

Glasgow Sheriff Court is reputed to be the busiest court in Europe dealing with the largest volume of criminal cases in Scotland, presenting particular challenges for COPFS but also meaning that any issues of inefficiency are particularly acute in Glasgow.

It may be useful to give an overview of the criminal courts in daily use in Glasgow Sheriff Court:

Most days there are five sheriff and jury courts running and one to two solemn procedural courts depending on the day of the week. Each day there are four “standard” summary trial courts and one to two domestic abuse summary trial courts, again depending on the day of the week. Three justice of the peace summary trial courts run each day and a sheriff diet court and a justice of the peace diet court on one day each week. Intermediate diet courts for sheriff cases and for justice of the peace cases run on selected days of the week and lastly custody courts run each day in courts 1a, 2, 3 and 4.

Whilst this undoubtedly is an extremely busy programme of business it must be borne in mind that amongst the measures introduced as a result of Summary Justice Reform in 2008 was an expansion of alternatives to prosecution and the establishment of justice of the peace courts (administered by the Scottish Courts Service) in place of district courts (administered by local authorities). In Glasgow this latter measure led to the closure of the old district court complex. Both measures have resulted in a reduction in the number of summary courts. Previously a diet court and an intermediate diet court for Glasgow Sheriff

Court cases would sit five days per week together with six summary trial courts and a full programme of business in the old district court building.

### Question 1

*Please outline your views on the overall efficiency and effectiveness of the COPFS in its core role of considering reports about crime from the police and bringing prosecutions. Are there ways in which the services provided by could be improved -for instance, through increased use of technology, further reforms to criminal procedure, or better case management? If so do those changes also bring risks, in terms of the overall; interests of justice or of access to justice (bearing in mind the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc.)?*

The overriding concern raised by our members is the huge difficulty encountered in seeking to contact procurators fiscal (referred to as “deputes”) to discuss cases. Such discussion could often lead to resolution. It is fair to say that deputes dealing with summary prosecutions are “firefighting” and it is widely acknowledged that unless you are telephoning to discuss a case which is calling within days, then it is extremely unlikely that a depute will be available to discuss the case.

This situation is compounded by the often insurmountable difficulties defence solicitors encounter in trying to actually speak to a depute. The situation in Glasgow is that a defence solicitor requires to phone a call centre dialling an expensive business rate 0844 number to ask to speak to a procurator fiscal. The reality is that it is not unusual to be told there are no deputes available to discuss the case or indeed that there is no-one in that department at all who can answer your call. The call centre operator may be able to identify the depute who has been assigned the particular case but is specifically forbidden from releasing the direct dial number of that depute. This inevitably means that the solicitor makes repeated and costly telephone calls in an attempt to discuss the case. Again we wish to stress that procurators fiscal themselves, when contact is achieved, either in person or by phone have no difficulty whatsoever in releasing their direct dial numbers. We are extremely puzzled by the prohibition on releasing direct dial numbers: it creates a real impediment to resolving cases and to facilitating meaningful discussion about outstanding issues prior to court.

We wish to stress that there is a will locally to try to address these communication problems and there has been ongoing discussion for over five years between the Crown and the committee of the GBA to try to resolve these issues. In particular we have long been asking for direct dial numbers to be circulated and for a standard rate number to be introduced. Defence solicitors report spending inordinate and costly amounts of time on the phone attempting to reach deputes. For example, following discussion between the COPFS in Glasgow and the GBA, a plea hotline has been initiated on a number of occasions and whilst this initiative is still ongoing it is faltering: solicitors report leaving messages asking to resolve cases but these calls are not returned. It appears to solicitors that this hotline is often not manned or that calls are returned only in respect of cases calling within a matter of days, again an indicator that resources are stretched. Whilst some members have reported improvements in communication through the use of the Criminal Justice Secure email (“CJSM”) this tends to be in connection with solemn cases.

The difficulties in communication in respect of summary cases can be contrasted with the significant improvements achieved in solemn cases following work carried out by COPFS in Glasgow to divide solemn cases into specific crime areas with named deutes for example "sexual offences", "domestic abuse" and, drugs cases and crucially to make available to defence agents a comprehensive list of contact numbers for the specific deutes assigned to each of these different sections. Practice Note number 3 of 2015 issued by the then Lord Justice Clerk, Lord Carloway (now the Lord Justice General) issued a statement of the best practice expected in solemn criminal business in the Sheriff Court. This provided that the presiding sheriff will expect the Crown and the defence to have entered into timeous and effective communication before the First Diet and to be in a position to address the sheriff on the matters outlined in what is known as the Joint Written Record. This is in anticipation of the expected "best practice" becoming a statutory requirement when the relevant provisions of the Criminal Justice (Scotland Act) 2016 are implemented. At present in Glasgow the Crown and the defence (despite very significant concerns about the limited legal aid payment available for such work) are working to secure such effective communication and where appropriate resolution takes place. The provision of a list of telephone numbers together with an initial letter to the agent detailing the responsible deute and the assigned precognoser greatly assists. The GBA has been invited by the judiciary in Glasgow to meet with them in the coming weeks to discuss the operation of the solemn procedural court and the impact of Practice Note number 3. We also wish to note that in advance of the introduction of Practice Note number 3, the COPFS in Glasgow assisted the GBA by addressing our 2015 Annual General Meeting in respect of the new organisation and contact points for solemn business.

There are significant problems with correspondence sent to the Procurator Fiscal's office in Glasgow in respect of summary cases. Agents consistently report sending letters to which they receive no response. Deutes and defence agents then find themselves attempting to resolve issues at court which could have been resolved prior to the calling of the case. This leads to continuations and contributes to the "churn" of cases. It appears that the issue of responding to agent's letters is one which has not been resolved by the use of technology. Deutes are often called upon by the presiding sheriff to explain why a letter from an agent does not appear to have reached a specific case file. The explanation given by deutes is often that such letters are "scanned" in some sort of central scanner which then denotes that the letter has been received but does not mean that the letter has been "married" with the particular file, leaving the deute in court unaware of the content of the letter.

Again it is worthy of note that each summary trial court in Glasgow has often ten to twelve cases calling for trial and amongst those there can often be complex child witness trials, requiring special measures, "benefits fraud" cases with voluminous disclosure or indeed prosecutions under the Sexual Offences Act 2009. All such cases are likely to generate lengthy and complicated preparation for trial for both the Crown and defence and the difficulties in pre-trial communication in cases such as these can lead to delays impacting upon witnesses and accused persons. Against this backdrop of a deutes "standard summary court" often containing difficult and complex cases members, in the past, may have expected that more straightforward cases could benefit from early plea adjustment. There has however been a perception in recent times that deutes have significantly less discretion than was previously the case. The Prosecution Policy and Guidance Book of Regulations recognises the legitimacy of plea adjustment as a proper exercise of prosecutorial discretion and indeed the procurator fiscal remains under a duty throughout

the lifetime of a case to consider, at each stage of the case, the action which best serves the public interest in the effective administration of justice. Whilst we recognise that deposes also must have regard to any departmental protocols it is invariably the case that the person best placed to make a decision in respect of what, in the circumstances of a particular case is an acceptable and reasonable plea, is the depute in court. Whilst any observations we can make would be purely anecdotal the perception is that this may be due to the fact that, particularly in dealing with summary business, many of the deposes are junior fiscals many of whom are engaged by the Crown on fixed term contracts, perhaps leading to an understandable reluctance to make any significant decisions in terms of a plea being proposed to them, through anxiety that their decision will be criticised. This too can lead to continuations and delays in cases as often members' report that deposes will tell them they will be obliged to seek the advice of a more senior colleague before accepting a plea.

Whilst we are aware that innovations such as the use of electronic devices in court by deposes and the more wide ranging use of technology envisaged by the Evidence and Procedure Review ( such as pre-recorded witness statements ) are being developed we have to observe that regardless of the increased use of CJSM, the scanning of letters to virtual files and the use of direct dial numbers, it appears that there are just not enough people on the "ground" in court and in the office in terms of deposes and support staff to cover the work. We are concerned that whilst the changes to the methods of obtaining and presenting witness evidence continue to be developed and increasing demands placed upon both the crown and the similarly stretched defence bar that more basic problems, as described above, persist.

## Question 2

*Please outline how well you consider the COPFS works with other stakeholders in the criminal justice system, so as to provide a "joined up" and complimentary service that helps meets the ends of justice. Other stakeholders might, for instance, include the police, defence lawyers, the courts, the prison service, criminal justice social work and third party organisations working with victims or offenders*

The GBA and its members enjoy a positive relationship with other stakeholders in the criminal justice system in Glasgow. As previously noted we have a good relationship with the crown characterised by ongoing dialogue to try to resolve difficulties. Similarly there is a positive working relationship with, for example, the Scottish Courts Service and with members of criminal justice social work and such stakeholders are always receptive to consulting with the defence bar as and when issues arise. For example the COPFS, Scottish Court Service and the GBA have worked together to introduce "custody lists" which are made available in the solicitors common room detailing when a case is "marked", when the papers are in court and what the Crowns position in respect of any bail application will be. However we have long been concerned that there is no representation on behalf of defence solicitors on Criminal Justice Boards, and specifically on the Justice Board for the Sheriffdom of Glasgow and Strathkelvin. As very significant changes to the criminal justice system are being planned by the Scottish Courts Service Evidence and Procedure Review, including the development of a case management system in summary and solemn cases, defence solicitors could become party to such case management systems. We consider that joint working with other stakeholders could be enhanced by the formal inclusion of defence solicitors in Criminal Justice Boards.

### Question 3

*Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its core role effectively? And is it appropriately “future –proofed” -for instance to deal with new technologies available to criminals, changes in the overall profile of crime in 21st century Scotland, or withdrawal from the European Union? If not, what additional capabilities does the COPFS need?*

As has been reported in 2014 to the Justice Committee by the Procurator Fiscals Society section of the FDA (trade union) there has been an increase in the number of serious cases reported to the COPFS (cases to be prosecuted at petition level) and an increased number of which are complex sexual offences.

Whilst it is obviously right that such serious High Court and Sheriff and Jury Proceedings are prepared and prosecuted thoroughly we are concerned that the “standard” summary cases are also accorded appropriate attention. The public undoubtedly would expect that serial instances of drugs, public order, dishonesty and violent offences are properly prosecuted by well-resourced and properly supported deutes. Whilst the very significant impact upon the public of High Court offences cannot be overstated it is the case that many more members of the public will be affected by such offences generally prosecuted at summary level.

### Question 4

*How well does the COPFS respond to the needs of victims of crimes and to witnesses (especially) vulnerable witnesses) in criminal cases and meets its legal obligations towards them*

In recent years the COPFS has made increasing use of the Vulnerable Witness provisions within the Criminal Procedure Scotland Act 1995: using screens, supporters and video links to assist in the taking of evidence from child and vulnerable witnesses. It is now a routine question, for example, in a domestic abuse custody court for the deute to ask the defence solicitor if evidence of identification can be agreed. The answer to this is invariably yes, which then allows the witness to give their evidence without identification being at issue. Similarly when evidence is not agreed or, where it is considered appropriate, Video Identification Parade Electronic Recording (“Viper”) identification parades are held again designed to minimise the impact upon witnesses from having to make a “dock” identification in court.

It is likely that if the recommendations of the Scottish Courts Evidence and Procedure Review are implemented this will significantly change the landscape for the taking of evidence in criminal trial.

We would however wish to comment that in our in experience of hearing from witnesses and indeed accused persons the biggest source of frustration and anxiety is delays in the conclusion of trials and the lengthy waiting at court. To reiterate a common theme in this submission - it is the lack of resources within the COPFS and in court accommodation for “standard” summary trials which is an ongoing concern.

## Question 5

*The Inspectorate of Prosecution in Scotland is the independent, statutory inspectorate for the COPFS. What is your awareness of the existence and role of the IPS and of its effectiveness in carrying out that role? Does it appear to have the resources it needs*

We are aware that the Lord Advocate appoints an officer known as Her Majesty's Chief Inspector of Prosecution in Scotland and that such an Inspector is tasked with securing the inspection of the COPFS and to submit a report on any particular matter in connection with the operation of the Service which the Lord Advocate refers to the Inspector. Our ability to comment upon this question is very limited as it does not appear that there is any real awareness amongst our members of the work of the Inspectorate of Prosecution in Scotland.

Glasgow Bar Association Committee  
19 October 2016

## Written submission from the Law Society of Scotland

### Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

This paper is in response to the Justice Committee's call for written evidence for the Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service ("COPFS"). We thank the Justice Committee for providing the Society with the opportunity to comment and provide input.

### General Comments

The Law Society of Scotland is the professional body for Scottish solicitors and includes Procurator Fiscal deputes within COPFS, defence solicitors and other solicitors practising within and interacting with the Scottish criminal justice system. Prosecuting in the public interest and protecting the right to a fair trial are two critical elements of a justice system and the work that our members do, both prosecution and defence, requires skill, judgment, commitment and professionalism.

Over the last 10 years there have been a number of reforms to the substantive and procedural criminal law in Scotland, to which all participants within the criminal justice system have been required to react and adapt. This has taken place at a stage that there have been significant financial pressures on the justice system.

*Question 1: Please outline your views on the overall efficiency and effectiveness of the COPFS in its core role of considering reports about crime from the police and bringing prosecutions. Are there ways in which the services provided by the COPFS could be improved – for instance, through increased use of technology, further reforms to criminal procedure, or better case management? If so, do those changes also bring risks, in terms of the overall interests of justice or of access to justice (bearing in minds the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc)?*

In terms of structure and organisation of COPFS, while it is acknowledged that case marking hubs existed prior to full implementation of the National Initial Case Processing Hubs (NICP) at Stirling and Paisley, it is felt that full implementation of NICP and a general move to centralisation of some core functions (e.g. the potential for a national High

Court function by 2018<sup>12</sup> and the centralised telephone system and national contact telephone number) means that it can, on occasions, be difficult to identify and contact the procurator fiscal dealing with a specific case. Prior to centralisation of certain functions contact could be made via the local procurator fiscal office. Whereas centralisation of certain functions may have financial, efficiency and consistency benefits to the organisation itself, this requires to be balanced against the ability for defence practitioners to be able to engage effectively with those dealing with the casework within COPFS. It should always be remembered that the key objective of the system is to uphold the interests of justice. Other of our members note that moves since April 2016 to refocus local business, namely summary and solemn (Sheriff & Jury) work under the Sherifffdom model and under a Sherifffdom Procurator Fiscal for all of that business, could be acknowledged as an improvement.

An example, raised by some of our defence solicitor members relates to the National Initial Case Processing Hubs and the marking of custody cases. As custody cases are marked centrally and not by Procurator Fiscal Deputes at local level, local demographics, and local knowledge may not be known by the marking depute. On occasion Procurator Fiscal Deputes in a local Court do not know when custody papers will be available because they are not in control of them. There can be a delay in custody papers being made available to the Court, and accordingly a delay in custody cases being able to progress through the Court. This is not in the interests of the victim/complainer, the accused or other participants in the system.

In terms of access to justice, greater use of technology and the possible future reforms in criminal procedure will have an impact on the overall interests of justice, or access to justice. We note that the use of technology is a necessary aspect of the justice system as we go forward, however, care needs to be taken to ensure that issues such as internet poverty do not disadvantage certain groups in society<sup>13</sup>. Careful consideration will require to be given on how best to ensure the service provided by COPFS and others within the criminal justice system is accessible and inclusive to all members of society. We approve of innovations led by COPFS, such as the electronic disclosure website, the piloting of electronic devices in court, and developments across the wider justice sector, such as the reforms suggested by the Criminal Evidence and Procedure Review.

*Question 2: Please outline how well you consider the COPFS works with other stakeholders in the criminal justice system, so as to provide a “joined up” and complementary service that helps meet the ends of justice. Other stakeholders might, for instance, include the police, defence lawyers, the courts, the prison service, criminal justice social work, and third party organisations working with victims or offenders.*

A policy trend in recent years has been the development of wider coordination between various justice bodies. For instance, the creation of the National Justice Board comprising of representatives from the Scottish Government, COPFS, SCTS, the Scottish Legal Aid Board, the Scottish Prison Service, Police Scotland, the Scottish Fire and Rescue Service and the Children’s Reporter Administration<sup>14</sup>, was cited by Audit Scotland in a recent

<sup>12</sup> [COPFS Strategic Plan 2015 - 2018](#)

<sup>13</sup> [Carnegie UK Trust, Digital Participation and Social Justice in Scotland, Douglas White, September 2016](#) and [Citizens Advice Scotland, Internet Access in Glasgow's deprived areas, 2015](#)

<sup>14</sup> <http://www.gov.scot/Topics/Justice/justicestrategy/justice-board>

report as one of the ways in which joint working had improved<sup>15</sup>. We have observed previously and we wish to reiterate that the Law Society of Scotland should be represented on the National Justice Board and there should be wider representation for defence practitioners at local Justice Boards. The work of the Justice Board, as Audit Scotland noted, could be widened as it appears that awareness of new strategies and policies by operational staff could be improved.

The Scottish Court and Tribunal Service (“SCTS”) Evidence and Procedure Review Group<sup>16</sup> are actively considering potential improvements to the summary justice system. The reforms, if implemented, would result in greater joint working between the principal criminal justice agencies, for example it is proposed that Police Scotland, COPFS, SCTS, the Judiciary and defence solicitors should all be party to and operate a case management system<sup>17</sup>. This could help to significantly reduce instances of delay in the criminal justice system.

Activity which strikes at criminal behaviour in our society goes wider than the courts and coordination has to be extended to include other agencies, for example local authorities and civic society bodies such as Scottish Women’s Aid, Victim Support Scotland and Rape Crisis Scotland.

*Question 3: Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its core role effectively? And is it appropriately “future-proofed” – for instance to deal with new technologies available to criminals, changes in the overall profile of crime in 21st century Scotland, or withdrawal from the European Union? If not, what additional capacities does the COPFS need?*

In November 2014 the Procurators Fiscal Society section of the FDA Union provided written<sup>18</sup> and oral evidence<sup>19</sup> to the Justice Committee on the Scottish Government’s Draft Budget 2015-2016. The submissions highlight the issues faced by COPFS in terms of funding available and the many challenges faced by COPFS staff against a background of an increase in the number of serious and complex cases reported to COPFS, the particular types of crime that make up that increase and various legislative developments.

While the number of prosecutions resulting in court disposal has declined<sup>20</sup> in the last five years, the complexity of the impact of recent legislation and complexity of certain types of cases reported means more preparation and court time is required. Presentation and preparation of certain types of crime require a more specialised and knowledgeable approach within COPFS, which ought to be matched by defence solicitors.

Lack of resources has had an impact on both preparation for and presentation of criminal prosecutions in our courts. As an example, previously most local COPFS offices employed “precognition officers” to assist in the preparation of solemn prosecutions. Essential

<sup>15</sup> *Prosecuting cases in the criminal courts*, Audit Scotland, September 2015

<sup>16</sup> [SCTS, Evidence and Procedure Review: Next Steps, 25 February 2016](#)

<sup>17</sup> [SCTS, Evidence and Procedure Review: Next Steps, 25 February 2016 at pages 10-14](#)

<sup>18</sup> [http://www.parliament.scot/S4\\_JusticeCommittee/Inquiries/DB10\\_FDA\\_Union.pdf](http://www.parliament.scot/S4_JusticeCommittee/Inquiries/DB10_FDA_Union.pdf) and [http://www.parliament.scot/S4\\_JusticeCommittee/Inquiries/DB10a\\_FDA\\_Union.pdf](http://www.parliament.scot/S4_JusticeCommittee/Inquiries/DB10a_FDA_Union.pdf) and [http://www.parliament.scot/S4\\_JusticeCommittee/Inquiries/DB11\\_FDA\\_PFS\\_Section.pdf](http://www.parliament.scot/S4_JusticeCommittee/Inquiries/DB11_FDA_PFS_Section.pdf)

<sup>19</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=9645&mode=pdf>

<sup>20</sup> [COPFS, Statistics on Case Processing Last 5 Years 2011-2016](#)

witnesses were often personally interviewed prior to trial. Some of our defence solicitor members have observed that in most Sheriff and Jury trials this preparation no longer takes place, further we note that the FDA submission to the Justice Committee in November 2014 made reference to a reduction in the practice of taking pre-trial precognitions<sup>21</sup>. The role of the precognition officer assisted in the proper preparation of more serious criminal cases without which a Procurator Fiscal can be at a disadvantage. We believe that improved preparation can improve the experience of victims and witnesses, and lead to a more efficient process. Whilst a witness may not be precognosed, this should not be taken to mean that there is no level of engagement with victims and witnesses (as mentioned in the response to question 4).

Other of our members note that there are now specialist investigating teams within Police Scotland which have led to an overall improvement in the way these cases are investigated and reported to COPFS. The police statements form the basis for disclosure to the defence which in turn informs the preparation of the defence case. Where there were identified gaps in what the police had covered in full statements the practice was, and is, to task the police to take a further statement to cover that material which is then disclosed to defence solicitors.

*Question 4: How well does the COPFS respond to the needs of victims of crimes and to witnesses (especially vulnerable witnesses) in criminal cases and meet its legal obligations towards them?*

COPFS prosecutes in the public interest, but has a significant role in engaging and consulting with victims and witnesses, this could be by Procurators Fiscal Depute, or, dependent on the type of criminal case, the COPFS Victim Information and Advice service (VIA)<sup>22</sup>. In addition, there are a number of agencies outwith COPFS who engage with victims and witnesses with the criminal justice system, for example, Police Scotland, Victim Support Scotland and Scottish Women's Aid.

In certain cases that proceed to trial, victims may be given the option of providing a "victim statement"<sup>23</sup> explaining the effect the crime has had on them. Where an accused has been found guilty or has pled guilty, if provided, the victim statement is made available to the Judge or Sheriff for consideration during the sentencing process.

Legislation<sup>24</sup> allows for special measures to be sought for vulnerable adult and child witnesses to give their evidence at court. Recent changes<sup>25</sup> extended existing powers in relation to special measures for vulnerable witnesses. One of the key changes is that additional categories of vulnerable victims (victims of sexual assault, domestic abuse, trafficking and stalking) and all witnesses under 18, are entitled to certain special measures.

The recommendations of the Criminal Evidence and Procedure Review, if implemented, may change the roles of those involved in the criminal courts and their engagement with witnesses in the criminal justice system, with evidence captured at an earlier stage and

<sup>21</sup> [http://www.parliament.scot/S4\\_JusticeCommittee/Inquiries/DB10\\_FDA\\_Union.pdf](http://www.parliament.scot/S4_JusticeCommittee/Inquiries/DB10_FDA_Union.pdf)

<sup>22</sup> <http://www.crownoffice.gov.uk/involved-in-a-case/victims>

<sup>23</sup> <http://www.gov.scot/Resource/0047/00477968.pdf>

<sup>24</sup> Vulnerable Witnesses (Scotland) Act 2004

<sup>25</sup> Victims and Witnesses (Scotland) Act 2014

limitations on cross-examination, particularly for uncontentious evidence. Care must be taken to ensure that victims and witnesses feel as confident as they can in being involved in criminal cases.

*Question 5: The Inspectorate of Prosecution in Scotland is the independent, statutory inspectorate for the COPFS. What is your awareness of the existence and role of the IPS and of its effectiveness in carrying out that role? How effective has it been in carrying out its role? Does it appear to have the resources it needs?*

We are not best placed to determine whether Her Majesty's Chief Inspector of Prosecution in Scotland ("HMCIPS") has the resources it requires. However, we note that HMCIPS is appointed by the Lord Advocate<sup>26</sup>. To reinforce the independence of the Inspector, the terms and conditions of the appointment should be transparent, for example the circumstances in which the Inspector may be removed from post should be clear and placed on a statutory footing.

HMCIPS submits to the Lord Advocate a report on any particular matter connected with the operation of COPFS which the Lord Advocate refers to the Inspector.<sup>27</sup> HMCIPS is required to produce an annual report for the Lord Advocate, who must be presented with a draft and given an opportunity to comment on the report. The Lord Advocate must lay the annual report before the Scottish Parliament. The Lord Advocate is under no statutory duty to consider the HMCIPS recommendations. Although the legislation requires that HMCIPS is to remain independent from COPFS, given the Lord Advocate has statutory power to appoint the Inspector and determine matters for investigation improvements could be made to enhance that independence. Transparency could be improved if the inspectorate team comprised of a more representative group of non-solicitor and solicitor members, which would reinforce the independence which the statute requires.

Law Society of Scotland  
19 October 2016

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<sup>26</sup> Section 78 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

<sup>27</sup> Section 79 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.