



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

**13th Meeting, 2016 (Session 5)**

**Tuesday 20 December 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 6 and 7 in private.
2. **Draft Budget Scrutiny 2017-18:** The Committee will take evidence on the Scottish Government's Draft Budget 2017-18 from—

Rt Hon James Wolffe QC, Lord Advocate;

David Harvie, Crown Agent and Chief Executive, Crown Office and Procurator Fiscal Service.

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

Michelle Macleod, HM Chief Inspector of Prosecution in Scotland;

Dawn Lewington, Assistant Inspector, HM Inspectorate of Prosecution in Scotland.

4. **Subordinate legislation:** The Committee will consider the following negative instrument—

Lyon Court and Office Fees (Variation) (Devolved Functions) Order 2016 (SSI 2016/390).

5. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting on 15 December 2016 from the Convener of the Sub-Committee.

6. **Railway Policing (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

7. **Work programme:** The Committee will consider its work programme including its approach to future EU engagement.

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The papers for this meeting are as follows—

**Agenda item 2**

Paper by the clerk - Draft Budget Scrutiny 2017-18	J/S5/16/13/1
Private paper - Draft Budget Scrutiny 2017-18	J/S5/16/13/2 (P)

**Agenda item 3**

Paper by the clerk - Inquiry into COPFS	J/S5/16/13/3
Private paper - Inquiry into COPFS	J/S5/16/13/4 (P)

[Written submission from HM Inspectorate of Prosecution in Scotland](#)

**Agenda item 4**

Paper by the clerk - SSI 2016-390	J/S5/16/13/5
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**Agenda item 5**

Paper by the clerk - Feedback from Sub-Committee	J/S5/16/13/6
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**Agenda item 6**

Private paper - Railway Policing (Scotland) Bill	J/S5/16/13/7 (P)
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[Railway Policing \(Scotland\) Bill and accompanying documents](#)

**Agenda item 7**

Private paper - Work programme	J/S5/16/13/8 (P)
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**Justice Committee**

**13th Meeting, 2016 (Session 5), Tuesday 20 December 2016**

**Draft Budget Scrutiny 2017-18**

**Note by the clerk**

**Introduction**

1. The Committee agreed that it would focus its budget scrutiny this year on the Crown Office and Procurator Fiscal Service (COPFS). In advance of the 2017-18 draft Scottish Government budget being published on Thursday 15 December 2016, the Committee took evidence from the Auditor General for Scotland on Tuesday 13 December.
2. The Committee is to take evidence from the Rt Hon James Wolffe QC, who was appointed Lord Advocate in June 2016 and from David Harvie who was appointed Crown Agent on 4 April 2016.
3. The Lord Advocate, who is the Ministerial head of the COPFS, negotiates the COPFS' budget directly with the Cabinet Secretary for Finance and the Constitution. The Crown Agent is the Chief Executive of and the Accountable Officer for the COPFS.
4. The Scottish Government draft budget 2017-18 was published on Thursday 15 December. The [draft 2017-18 budget](#) can be accessed here.

**Committee consideration**

5. The Committee is currently undertaking an inquiry into the *Role and Purpose of the Crown Office and Procurator Fiscal Service*. A written submission was received from David Harvie in relation to the inquiry, which contains details of the current COPFS budget and information on its role and the changes it has undergone, and is therefore partly relevant to this evidence session. (The Lord Advocate will be giving concluding evidence in relation to that inquiry at a meeting in January.) Please see Annexe A for the submission.

## Justice Committee

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

#### Written submission from the Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service (COPFS) welcomes the Justice Committee Inquiry and looks forward to participating in the evidence sessions to explain our role and purpose in securing justice for the people of Scotland.

COPFS is Scotland's sole prosecution service. COPFS receives reports about crimes from the police and other reporting agencies and then decides what action to take, including whether to offer a direct measure or to prosecute someone and if so, in what forum. COPFS also investigates deaths that need further explanation and investigates and prosecutes allegations of criminal conduct against police officers.

The COPFS budget for the current year is £113.45m. This includes additional funding for complex investigations and the prosecution of domestic abuse cases. The COPFS budget has remained static for five years since it was £118.3m in 2009-10.

Further information about the work, structure and resources of COPFS can be found here (**COPFS Fact Sheet 1<sup>1</sup>**).

### Changing Landscape

#### *Legislative Changes*

There have been a number of significant legislative changes throughout the last ten years that have affected COPFS. These have been introduced to modernise the criminal justice system and the investigation of sudden deaths as well as to improve the service given to people who come into contact with the criminal justice system as victims and witnesses. COPFS has supported all of these changes and we have absorbed the associated increased costs by working closely with other parts of the criminal justice system, finding efficiencies and investing in our staff and digital technology.

The Criminal Justice and Licensing (Scotland) Act 2010 brought in a new stalking offence. The number of cases increased from 440 in 2011-2012, to 1640 in 2015-16. This signifies an increased confidence in the way that stalking cases are dealt with both by the police and COPFS.

Unresolved homicides are never closed. The Double Jeopardy (Scotland) Act 2011 allows us in limited circumstances to prosecute someone for a second time. Additionally, the COPFS Cold Case Unit had been set up earlier in 2011. COPFS maintains a database of all cold case homicides and cases to which the Double Jeopardy (Scotland) Act may apply. The Cold Case Unit works closely with Police Scotland to review these cases to ascertain if there are any new evidential developments, including advances in forensic techniques, which would assist in providing a basis for criminal proceedings.

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<sup>1</sup><http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

The Victims and Witnesses (Scotland) Act 2014 expanded the scope of special measures to include additional categories of witnesses and introduced automatic entitlement to special measures for some classes of witnesses. It also implemented EU legislation giving victims the right to ask for a decision not to prosecute to be reviewed. The legislation has succeeded in its aim of increasing the number of witnesses who benefit from special measures<sup>2</sup> and the engagement of victims in prosecution decision making<sup>3</sup>.

The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is still to be implemented in full but widens the scope of fatal accident inquiries to include jurisdiction to inquire into the circumstances of the death of Scottish residents abroad. The UK Government had also previously legislated in the Coroners and Justice Act 2009 to allow inquiries to be held into military service deaths abroad. Under section 8 of the 2016 Act, the Lord Advocate has published a Family Liaison Charter, which enhances engagement between COPFS and bereaved relatives by increasing and formalising the frequency of contact with them. Procedural changes, which are still under consideration, may also affect the work of COPFS.

The Criminal Justice (Scotland) Act 2016, which is yet to be implemented, introduces significant changes to police powers; requires the publication of Codes of Practice in relation to investigative functions and stop and search powers; and makes changes to appeal and sentencing processes. As a consequence, COPFS will ensure that all staff are trained on these new powers and processes. In addition, prosecutors will now have a role to play where an accused person challenges liberation conditions set by the police in respect of investigative liberation and undertakings; and in respect of applications for post charge questioning. This Act also aims to improve the management of Sheriff and Jury business across Scotland, which should bring significant improvements for victims and witnesses, in particular in relation to the citing of witnesses, agreement of evidence and an increase in the resolution of cases without trial. This will be achieved by focusing the increased use of resources at an earlier stage of each case in order to simplify and better manage cases at a later stage, thereby minimising the impact on victims and witnesses when cases come to trial.

COPFS also welcomes the Abusive Behaviour and Sexual Harm Act 2016 which is not yet in force. In particular, it allows for the aggravation of an offence of abusive behaviour to a partner or ex-partner and creates a new offence of intimate image abuse. However, we anticipate an increase in cases being reported to COPFS as a result of these new offences and this additional casework will require to be managed within our existing resource.

### ***Changes in Reported Crime***

Since 2010, the profile of crime has changed across Scotland. Whilst the number of overall reports to COPFS has fallen by 15%, the number of domestic abuse and sexual offence reports received has increased significantly and these cases are inherently more complex and contentious and more likely to result in a trial, resulting in lengthier trials taking place

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<sup>2</sup> There were 13,541 special measures applications in 2015 and our estimate for 2016 is that there will be approximately 34,700 applications.

<sup>3</sup> There were 139 requests for a review of the prosecution decision in the first year of the scheme's operation (July 2015 to June 2016).

more frequently. Detailed information about the changing profile of crime reported to COPFS can be found at (**COPFS Fact Sheet 2<sup>4</sup>**).

### ***Judicial Decisions***

In 2005 the cases of *Holland v HMA*<sup>5</sup> and *Sinclair v HMA*<sup>6</sup> at the Judicial Committee of the Privy Council required COPFS to make urgent process changes to the system of disclosure of evidence to the defence, which were considerably more onerous for COPFS. Whilst this material is now transmitted to the defence electronically, disclosable material requires to be considered and uploaded onto the electronic website. Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010 created a statutory disclosure regime, which again placed additional process requirements on COPFS.

### **COPFS Response to the Changing Landscape (COPFS Fact Sheet 3<sup>7</sup>)**

This altered landscape has had a major impact on how COPFS conducts its business over the last ten years. We have had to change our structures, governance and working practices in order to continue to deliver an effective prosecution service within the resources available. Planning for and adapting to this changing landscape, including collaboration and engagement with key stakeholders, has been continuous throughout this time. We have focused on two key areas:

- **Balancing specialisation and local engagement:** we recognised over fifteen years ago that we could no longer rely on our staff in a local prosecution office to deal effectively with every aspect of our work. We have therefore sought to retain a strong presence at the local courts where our staff prepare and prosecute local summary cases. At the same time, we have adjusted our working practices to focus on areas of specialisation where we recognise that there is a need for our staff to build up expertise and links with stakeholders in particular areas e.g. initial case processing, sexual offences, wildlife and environmental crime, health and safety offences, homicide, counter-terrorism, sudden death investigations. These are all areas of work which are no longer left to the local office to deal with but are investigated and prosecuted by specialist prosecutors. We are confident that the benefits achieved from this approach have been very significant.
- **Investing in our staff and our digital capacity:** we have continued to invest in training our staff, opening a dedicated Prosecution College in Glasgow in 2007 at a cost of £720,000, continuing to recruit a significant number of trainees per year (22 trainees started their traineeship with us in August 2016) and recruiting staff on a permanent basis as our financial circumstances allow. We have also invested in our digital capacity, giving us an electronic system of disclosure and a full electronic case management system which although more than ten years old is still unrivalled in its ability to share information electronically across the criminal justice system and manage our workload flexibly without being tied to the location of a paper file.

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<sup>4</sup> <http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

<sup>5</sup> 2005 SCCR 417

<sup>6</sup> 2005 SCCR 446

<sup>7</sup> <http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

Our aim for the next ten years is to develop a more digital, skilled and engaged workforce and our plans to achieve this focus on the following priorities:

## **1. Structural Changes and Engagement with Staff**

In January 2015 it became clear that the structure of the organisation required further refinement to ensure the specialist approach was maintained and to address issues that our staff had raised in respect of the large geographical units that existed.

In April 2016 the “Shaping the Future” programme delivered a four function model for the organisation. Of particular significance was the introduction of 6 Sheriffdom Business Units within the Local Court Function which deals with all Sheriff Summary and Sheriff and Jury business. The introduction of the Local Court Function recognised and addressed both the external and internal perceptions of loss of local identity and local external contact. Throughout the change programme there was extensive face to face consultation with staff and over 1800 lines of feedback from staff about what worked well and what needed improved. Throughout the structural change programme, COPFS engaged with external partners and stakeholders.

Throughout the structural change programme the feedback from our staff emphasised a number of aspects of their working lives which could be improved. As a result we are now developing the “Fair Futures” programme which will implement changes from 2017. The vision of “Fair Futures” is to continue to develop as a high-performing and aspirational organisation in which our people feel valued, supported and lead fulfilling working lives.

The Programme is grouped into four broad, connected work streams: Deploying People, Developing People, People and Performance Improvement, and Wellbeing. The initial focus of the project will be on supporting a number of key tasks, such as reviewing performance management, recruitment processes and the wellbeing of staff, all of which reflect the main priorities which have been highlighted in successive staff surveys and the Shaping the Future consultation in 2015

## **2. Treatment of Victims and Witnesses and VIA Review (COPFS Fact Sheet 4<sup>8</sup>)**

Since 2002, COPFS has provided a system to keep victims informed about their cases. This was launched by COPFS as the Victim Information and Advice (VIA) Service. VIA’s aim is to seek to assist victims by providing them, through dedicated staff who also operate as a point of contact, with information about the progress of their case as well as general information about the criminal justice system.

Before the launch of VIA, victims did not receive proactive notification of progress with their case and did not have a dedicated point of contact. While prosecutors were previously able to provide such information, this was not done systematically and consistently.

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<sup>8</sup> <http://www.crownoffice.gov.uk/publications/copfs-fact-sheets>

Since it was launched, our VIA staff have also taken on responsibility for applications for special measures under the Vulnerable Witnesses (Scotland) Act 2004 and the Victims and Witnesses (Scotland) Act 2014. They also now offer information 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. They provide information and advice to nearest relatives in a death investigation and will provide help to make arrangements through the Witness Service (operated by the Scottish Courts and Tribunal Service) for victims to visit the court before giving evidence.

It is sometimes not widely understood, although we try to make it clear to all victims with whom our VIA staff engage, that we are unable to provide them with broader help and support such as that which might be available from Victim Support Scotland or other charitable groups which support victims and witnesses in Scotland. Our VIA staff are trained, however, to help victims make contact with these additional sources of support.

Our VIA staff will also help victims to understand which issues are the responsibility of prosecutors and which are the responsibility of the broader criminal justice system, such as the scheduling of trials in the High Court.

In 2015 we undertook a review of our VIA service, which concluded with a list of 60 recommendations, the implementation of which is underway.

Implementation of the 2014 Act represents the progress which has been made in Scotland to make clear that those affected by crime are at the heart of the Scottish justice system. The law now provides a clear framework for the support and protection of victims and witnesses in Scotland.

### **3. Stakeholder Engagement**

COPFS engages with key partners on a regular basis at both a national and a local level, including the Scottish Government, Police Scotland, Barnardo's, Children 1<sup>st</sup>, Rape Crisis, Scottish Women's Aid, Shakti Women's Aid, Victim Support Scotland, Assist, the Children's Reporter, Safe to Say, LGBT Scotland, ROSHNI, Action Against Stalking, TARA, Migrant Help, SCoJEC, People First, Sense Scotland, Interfaith Scotland, Equality and Human Rights Commission and the Scottish Refugee Council.

COPFS has invited key stakeholders to be a member of an Independent Review Panel (IRP) on domestic abuse and sexual crime, which makes recommendations to improve our working practices. For example, as a result of recommendations from the IRP, VIA staff now receive training on domestic abuse and domestic abuse training course includes the impact that domestic abuse has on children. There have been three IRPs to date and it is anticipated that the next IRP will be scheduled for early 2017.

COPFS chairs an Expert Advisory Group on sexual crime, and attendees include experts from a number of sectors including some of the above-named stakeholders as well as a doctor from the Archway sexual assault referral centre.

The COPFS Equality Advisory Group (EAG) was created in 2003. Its members are external, independent advisers with professional experience of all aspects of equality and diversity. They provide advice and scrutiny for COPFS internal and external



activity, serving as a critical friend and providing access to communities who are often otherwise far from official networks.

Internally, the Equality Board, chaired by a Deputy Crown Agent, sets the strategic focus of equality work. Their role is to share good practice around Equality and Diversity at both a local and national level ensuring that the subject matter is embedded into day to day processes and practices. The Board advises on the creation of business plans for local networks and monitors performance against set outcomes/objectives.

COPFS staff from around the country, often with an interest or expertise in a particular area of equality and diversity, are members of our six Sheriffdom Equality Networks (ShENs). These work on a geographical basis and play a vital role in developing links with communities and encouraging staff to help address local issues and promote social responsibility and inclusiveness. The leads of the six ShENs report directly to the Equality Board.

In 2015, COPFS was listed by Stonewall as its 8<sup>th</sup> top employer in its annual list of Top 100 Employers in the UK, making it the top public sector employer in Scotland.

#### **4. Specialist Approach**

As described above, COPFS has been taking an increasingly specialised approach to its workload for some years now, particularly in relation to serious and organised crime and High Court prosecutions. The National Sexual Crimes Unit, established in 2009, has a cadre of Advocate Deputes who specialise in all serious allegations of sexual crime, including child sexual exploitation and human trafficking. In addition to conducting prosecutions, this dedicated team of senior prosecutors direct criminal investigations from the earliest stages, providing advice and expertise on all aspects of the investigation and preparation of these cases.

The increased reporting of sexual offences in recent years has led to the creation of specialised sexual offence units at Sheriff and Jury and High Court level and since May 2014, a bespoke Victim Strategy has been prepared for all victims in High Court sexual offence cases.

Training in this area of work has been expanded for prosecutors and VIA and now includes courses dedicated to victims and witnesses, interviewing child witnesses, sexual offences (including human trafficking), domestic abuse, stalking, and abuse in institutions. Our Learning and Development Division now has 14 members of staff, including four lawyers, and one of the aims of this division is to continue to improve how we prosecute sexual offences, domestic abuse and stalking.

A Management Development Programme is currently being rolled out to 400 managers in the service and there is also a depute accreditation process to ensure that all new procurator fiscal deputes achieve a consistent and recognisable level of competence.

## 5. Prosecution Policy Review

COPFS keeps its prosecution policies under review so that they remain appropriate and consistent with the principles set out in our Prosecution Code. We remain satisfied that the present approach to domestic abuse, stalking, sexual offences and hate crime is appropriate and we will accordingly continue to focus on these categories of crime as regards training, stakeholder engagement and wider confidence building throughout the communities of Scotland. We have conducted evidence based reviews, by reference to published data about sentencing outcomes, in other areas of criminality and it is apparent that in some cases, the appropriate practical outcome for the offender, victim and the wider community could be achieved more promptly and effectively by taking a different form of prosecutorial action.

As a result, we are updating some of our policies, both in respect of the forms of prosecutorial action that we take at the outset of a case and the decisions we make during the life of a case.

We will continue to operate a presumption of taking action where harm has been caused, support the reduction of reoffending, take account of the likely sentencing outcome and keep ongoing cases under review to ensure that our decision making remains appropriate.

## 6. Digital work

Work is underway to develop a public facing Witness Website that allows for the posting of information by COPFS of statement and case progress. It will also allow for the posting of information by witnesses and victims. We are also expanding the use of SMS and email to alert witnesses and victims about trial dates and the outcome of cases.

Other areas in which we have used digital means to become more efficient include the disclosure website and move towards a full electronic record in summary cases. COPFS is also implementing digital corporate applications to increase operational efficiency. The new applications are being launched on a phased-basis from October 2016.

COPFS is working with the Scottish Courts and Tribunal Service and Police Scotland on the Prisons to Court project, implementing the Video Conference link for Full Committal and Intermediate diet court appearances in a number of courts across the country. We plan to extend this to First Appearance from Custody in 2017-18.

We have also developed an application and technology to support tablet computers in court, avoiding the need for prosecutors to take prepared paper files to court. We are developing plans to roll this out across the organisation.

I hope this information is of assistance to the Justice Committee. Please do not hesitate to contact me if further information would assist.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Harvie', with a stylized flourish at the end.

**DAVID HARVIE**  
**Crown Agent & Chief Executive**

## Justice Committee

13th Meeting, 2016 (Session 5), Tuesday 20 December 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. At its 6 September meeting, it agreed to this remit—

“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.”

2. The Committee issued a [call for evidence](#), with a closing date of 19 October 2016. All [written responses](#) accepted as evidence can be found on the Committee’s [inquiry page](#).

#### Committee consideration

3. As 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.

4. 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](#).

5. The Committee's first formal evidence session was on [25 October 2016](#), when it heard first from SACRO, Scottish Women's Aid, Rape Crisis Scotland and Victim Support Scotland. It then heard from a panel of legal representatives, comprising the Law Society of Scotland, and members of the Glasgow, Edinburgh and Aberdeen Bar Associations.

6. At its meeting on [1 November 2016](#) the Committee heard from a single panel consisting of representatives from the Community union, representing G4S staff, Circle Families Outside and Social Work Scotland.

7. At its meeting on [15 November 2016](#), the Committee heard from two panels of witnesses. The first was made up from unions representing COPFS workers and police representative bodies. The second panel consisted of two representatives of the Faculty of Advocates (both former Advocates Depute at the COPFS).

8. On [22 November 2016](#) the Committee heard from two panels of witnesses. The first panel was made up from is made up of Justices of the Peace and the second from representatives from Police Scotland and the Scottish Courts and Tribunal Service.

9. At its meeting on [29 November 2016](#) the Committee heard from Ian Thomson from the Royal Society of Protection of Birds who was representing Scottish Environment Link, about the COPFS's response to environmental and welfare crime. The Committee also heard informally and privately from two former employees of the COPFS and an agreed [note](#) of that meeting has been published.

10. The Committee heard from two personal injury lawyers at its meeting on [13 December 2016](#). The focus of the session was on the COPFS's handling of health and safety offences.

11. At its meeting on 20 December the Committee will take evidence from—

Michelle Macleod HM Chief Inspector of Prosecution in Scotland; and

Dawn Lewington, Assistant Inspector, Inspectorate of Prosecution in Scotland

12. HM Inspector's webpage (hosted on the Scottish Government website) [states](#) that the aim of the Inspectorate of Prosecution is—

*“... to enhance the quality of service provided by and secure public confidence in the Crown Office and Procurator Fiscal Service (COPFS) through independent inspection and evaluation to enhance the effectiveness of and to promote excellence in the prosecution service in Scotland.”*

13. HM Inspector has provided a written submission in response to the Committee's call for evidence on the inquiry. This is set out in the Annexe to this paper.

## **Annexe: Written submission from the Inspectorate of Prosecution in Scotland**

In relation to the Committee's call for evidence regarding the Inspectorate of Prosecution in Scotland (IPS), the following information is provided for assistance.

### **Background**

1. In 2000, Dr Raj Jandoo, Advocate, QC conducted an independent inquiry on the liaison arrangements between the police, the Crown Office and Procurator Fiscal Service (COPFS) and the family of the deceased Surjit Singh Chhokar in connection with his murder and the related prosecutions.

2. One of the recommendations of the Inquiry was that an Inspectorate of the COPFS should be established, "*to introduce a measure of accountability, which is essential for public confidence*". The Inspectorate of Prosecution in Scotland (IPS) was established in December 2003.

### **Statutory Provision**

3. In April 2007, the IPS was placed on a statutory footing with the enactment of sections 78 and 79 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

4. Section 78 of the 2007 Act provides for the appointment by the Lord Advocate of an officer known as Her Majesty's Chief Inspector of Prosecution in Scotland.

5. Section 79 requires the Inspector to secure the inspection of the operation of COPFS and make recommendations that will contribute to the improvement of COPFS and enhance public confidence. The Lord Advocate may also require the Inspector to submit a report on any particular matter connected with the operation of the Service.

6. Section 79(9) specifically provides that the inspector "*is to act independently of any other person*" in exercising the functions conferred on him/her. This independence is guarded by IPS and respected by others.

### **Resourcing and Staffing**

7. The Scottish Ministers are responsible for allocating the resources within which the IPS operates. In 2010/11 the budget allocated to IPS was £350,000. In 2011, as a result of budget revisions, the budget for IPS for 2011/12 was reduced to £320,000. From 2011/12 through to 2015/16 the budget has flat lined at £320,000, representing a decrease in real terms.

8. The current staffing complement of the IPS consists of Her Majesty's Chief Inspector, (part time post, 4 days), a personal assistant and three inspectors - one part-time business inspector and two inspectors seconded from COPFS.

### **Vision**

9. The Inspectorate's vision is to enhance the effectiveness of and to promote excellence in the prosecution service in Scotland through professional and independent inspection and evaluation. The Inspectorate is concerned with outcomes, results and improvement.

### **Role of Inspectorates**

10. Effective inspection provides independent public assurance to stakeholders, the public, the Scottish Parliament and others on the quality and effectiveness of Scotland's key core

public services, such as that provided by COPFS. In times of budgetary constraint and rising public expectations, Inspectorates, including IPS, play a pivotal role in identifying opportunities for efficiencies and service improvement, promoting public confidence in the quality of public services and facilitating and driving forward improvement agendas.

### **Inspection Approach**

11. It is important that the work of IPS is relevant to the issues impacting on our communities. Since 2010, in common with other inspectorates, IPS inspection activity has evolved from conducting audits in a formulaic way, to developing programmes aiming inspection resource where risks to services are greater using sector risk profiles (from inspections) and sector intelligence (such as performance data and stakeholder feedback).

12. A risk-based assessment approach accords with the ethos of the Crerar review<sup>1</sup> and the legislative changes, promoting a risk-based approach and a user focus in the work of scrutiny bodies, enacted in the Public Reform (Scotland) Act 2010. It also takes account of increasing specialisation in COPFS and the comprehensive re-structuring of COPFS in April 2012, where there was a move to operational work being conducted on a function based approach within three Federations, and a further re-design of management structures in 2015/16, which saw the introduction of all work in COPFS being conducted on a national and functional basis.

13. Employing this approach, IPS has produced thematic reports which look holistically at services end to end. Since being established, IPS has published 22 thematic reports, including reports on victims in the criminal justice system, organ retention, management of time-limits and fatal accident inquiries (FAIs).

14. The main way in which inspectorates have impact is through their published reports and recommendations. For maximum impact and value from inspection findings, there needs to be risk-based monitoring and follow-up.

### **Follow-up Reports**

15. Since 2014, the Inspectorate has embarked on a rolling programme of follow-up reports to monitor the progress of COPFS implementation of our recommendations and to evaluate the effectiveness and outcomes of measures implemented. In the period covering July 2014 to August 2015 five follow-up reports were produced. Follow-up reports will continue to form part of our inspection cycle.

16. To minimise the impact of inspection on organisations, IPS seeks to ensure that there is no duplication of inspection through consultation with other scrutiny bodies, including Audit Scotland, and that the resources required by organisations to comply and co-operate with inspections are not disproportionate.

### **Collaborative Inspection**

17. It is recognised that some issues are best addressed by a multi-agency or partnership approach. IPS has conducted joint inspections with Her Majesty's Inspectorate of Constabulary for Scotland (HMICS). These include reports on:

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<sup>1</sup> *The Crerar Report on the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland*, published in September 2007.

- The Proceeds of Crime Act 2002 – published in October 2009; and
- Victims in the Criminal Justice System – Phase 1 published in October 2010 and Phase 2 published in November 2011.

18. More recently IPS has worked with HMICS to consider the possibility of a joint collaborative inspection on how offenders with mental health problems are dealt with in the criminal justice system. Recognising that a significant percentage of offenders have mental health problems, there would be benefit in exploring themes such as information sharing, the use of early interventions and diversions, and to identify any gaps in service provision, examples of best practice and what achieves the best outcomes.

19. Due to difficulties in identifying a cohort of persons with mental health problems that could be tracked throughout the criminal justice system, we have concluded that it is not feasible to conduct a joint inspection at this time. We have, however, identified what would be required to enable such an inspection to take place and it is intended that this work will be re-visited as part of IPS' future work programme.

### **Outcomes**

20. Assessing the impact of inspection can be challenging, particularly in relation to more nebulous concepts such as cultural change. Some examples of positive outcomes arising from our reports are provided below.

### **Cultural Impact/Public Assurance**

21. The primary objective of the organ retention inspection was to ensure that there was a comprehensive and robust system to notify nearest relatives if an organ was retained. The follow-up report and subsequent audits found that, since the publication of the organ retention report, there had been only one instance where temporary retention had been necessary. In that case, there was appropriate and timely notification.

22. The inspection also highlighted medical advances had significantly reduced the need to retain whole organs and emphasised that retention should only be required in exceptional cases, prompting a cultural change in the approach to the retention of organs.

### **Securing Improvement**

23. IPS seeks to identify more efficient methods of delivering the business. Two examples of recommendations aimed at modernising COPFS processes are:

- The management of time limits report recommended the electronic service of indictments to the accused person's legal representative. Not only would this introduce a more efficient process, it would result in savings for the police in terms of man hours involved in serving indictments.
- The Health and Safety Division (HSD) report recommended the introduction of electronic reporting by all specialist reporting agencies.

### **Policy development**

24. The impact of external scrutiny is not limited to the body being inspected; it can also provide evidence to inform broader policy development and implementation.

25. In the recent report on FAls, the inspection not only made recommendations designed to improve the efficiency and effectiveness of deaths investigations conducted by COPFS and provide better support for families, it also advocated that COPFS should explore with



the Scottish Civil Justice Council, the possibility of introducing rules to facilitate the attendance of “expert” witnesses at preliminary hearings to reach consensus on areas of agreement and identify areas of contention at an early stage of an FAI.

### **Identification of risk**

26. In making recommendations IPS is always mindful of resource implications for COPFS, particularly given recent budget constraints. The approach taken is to identify, where possible, more efficient ways that existing resources can be utilised to achieve better outcomes.

27. Resourcing issues, with the potential to impact adversely on the delivery of business, have been highlighted in a number of IPS reports, notably:

- The Summary Case Preparation thematic report, published in 2012;
- The HSD thematic report, published in 2013; and
- The Management of Time Limits thematic report, published in 2015.

28. In the latter report, we reported that:

*“Crime has become increasingly global resulting in more crimes being reported that transcend territorial boundaries, as well as the evolution of ever more sophisticated means of committing and detecting crime”; and “there has been an increase in the overall volume of serious crime reported by the police as well as a marked change in the profile of such cases, including a substantial increase in reports of sexual crime.”*

29. The report concluded that such factors, when set in the context of budgetary reductions, posed significant challenges for COPFS in the management of its solemn business.

### **IPS Programme of Inspection**

30. IPS is currently undertaking a follow-up report on the Management of Time Limits. As part of the follow-up report on Complaints Handling, IPS intends to review the operation of the statutory Right to Review.<sup>2</sup>

31. Taking account of the increase in complex historic sexual abuse cases and that cases involving sexual crimes now represent the majority of the COPFS High Court workload, we have recently embarked on a review of the investigation and prosecution of sexual crimes.

### **Inspectorate of Prosecution in Scotland 19 October 2016**

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<sup>2</sup> 2 Section 4 of the Victims and Witnesses (Scotland) Act 2014 introduced the right of a victim to review a decision not to prosecute or a decision to stop or discontinue a case in July 2015.

**Justice Committee**

**13<sup>th</sup> Meeting, 2016 (Session 5), Tuesday 20 December 2016**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following negative instrument:
  - [Lyon Court and Office Fees \(Variation\) \(Devolved Functions\) Order 2016 \(SSI 2016/390\)](#) [see page 3].
2. If the Committee agrees to report to the Parliament on the instrument it is required to do so by 16 January 2017.

**Procedure for negative instruments**

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
4. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
5. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
6. Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

### **Guidance on subordinate legislation**

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

### **Recommendation**

9. **The Committee is invited to consider the instrument.**

**LYON COURT AND OFFICE FEES (VARIATION) (DEVOLVED FUNCTIONS)  
ORDER 2016 (SSI 2016/390)**

**Introduction**

10. The instrument is made under section 5, as read with paragraph 3 of schedule 3, of the Public Expenditure and Receipts Act 1968. The Order varies the fees payable in respect of devolved functions of the Lyon Court (including the judicial functions of the Lord Lyon). This Order will come into force at the same time as the Lyon Court and Office Fees (Variation) (Reserved Functions) Order 2016 which will vary the fees payable in respect of reserved functions, primarily the granting of Arms. The latter Order has been made by the Secretary of State for Scotland and laid in the UK Parliament.

11. Further details on the purpose of the instrument can be found in the policy note (see below).

12. The instrument comes into force on 1 January 2017.

**DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 13 December 2016 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

**JUSTICE COMMITTEE CONSIDERATION**

14. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 16 January 2017.

**Policy Note: Lyon Court and Office Fees (Variation) (Devolved Functions) Order 2016 (SSI 2016/390)****Background**

1. The Court and Office of the Lord Lyon (“Lyon Court”) is a court of law which regulates heraldry in Scotland and is headed by the Lord Lyon King of Arms. The Lord Lyon is the sole authority for granting of Coats of Arms and maintains the Public Register of All Arms and Bearings in Scotland and the Public Register of All Genealogies and Birthbrievies in Scotland together with other records. The Lord Lyon also has judicial functions in relation to the matriculation of existing Arms and determining prosecutions which may be brought before the Court of the Lord Lyon by the Procurator Fiscal to the Lyon Court in relation to infringements of the law of Arms.
2. Schedule B of the Lyon King of Arms Act 1867 sets out fees payable to the Lyon Court. These fees were last varied in 2008 and, prior to that, in 1996. In 2008, for the first time, two Fees orders were made - a Scottish Statutory Instrument for fees payable for devolved functions was laid in the Scottish Parliament and a Statutory Instrument dealing with fees payable for reserved functions was laid in the UK Parliament.

3. Fees are charged when an individual or organisation who wishes to use Arms petitions the Lyon Court for a new Grant of Arms or, where an individual can trace their ancestry back to an ancestor who had a Grant of Arms, petitions the Lyon Court for a “matriculation” showing their place within the family. When a grant or matriculation is obtained, an illuminated parchment, narrating the pedigree as proved, is supplied to the Petitioner, and a duplicate is recorded in the Public Register of All Arms and Bearings in Scotland. Fees are also charged for searches in the heraldic registers and manuscripts and matters relating to messengers-at-arms.
4. Fees charged by the Fees Orders are payable to the Scottish Government. However, the full fees charged to the petitioner also include the Herald Painter's fee and the costs of materials in preparing the Petitioner's Letters Patent. This is the title deed to the Grant or Matriculation of Arms, written in a formal script on vellum, illustrating the Arms in full colour, and sealed with the Seal of the Lord Lyon King of Arms.

### **Policy Objectives**

5. The Lyon Court considers that it is now necessary to increase the fees charged for both its devolved functions (including matriculations) and reserved functions (primarily the granting of Arms). The increases in fees will not pay for the whole costs of the Lyon Court as work is carried out which does not relate to the granting or matriculation of Arms or connected with searches in their records. Other work includes handling general enquiries such as origin of name, clan membership, definition of heraldic terms etc and ceremonial duties. The fees have not been increased since 2008 and, as office costs have increased during that period, fees are to be correspondingly increased.
6. This Order varies the fees payable in respect of devolved functions of the Lyon Court (including the judicial functions of the Lord Lyon). This Order will come into force at the same time as the Lyon Court and Office Fees (Variation) (Reserved Functions) Order 2016 which will vary the fees payable in respect of reserved functions, primarily the granting of Arms. The latter Order has been made by the Secretary of State for Scotland and laid in the UK Parliament.
7. These two Fees Orders provide for increases in almost all of the fees charged by the Lyon Court. The largest increases are to the lodging fees. However, the lodging fee forms part of the fee for a matriculation of Arms, and is deducted from the total fee due on completion of a matriculation. The increases in lodging fees are to cover the costs of the initial work - scrutiny of the petition and supporting documentation, searches to determine appropriate designs, correspondence with petitioners which all take place before the final agreement on the design of the arms to be granted or matriculated - after which the balance of the fees are paid.
8. The two Fees Orders will, for the first time, provide for increases in fees for the next three years, in early 2017, 2018 and 2019. This will enable fees to be increased but avoid the need to make separate orders each year.

## **Consultation**

9. A joint, informal consultation by the Scottish Government and the Scotland Office took place on proposals to increase fees charged by the Lyon Court. Those consulted included organisations and individuals with an interest in heraldry and genealogy. Consultees included Officers of Arms, the Law Society of Scotland, the Society of Messengers-at-Arms and Sheriff Officers and a number of representative bodies. Those who responded were broadly in agreement with the proposals for increases in fees.

## **Impact Assessments**

10. This Order will have no negative equality impacts. Therefore no Equality Impact Assessment or other impact assessments have been undertaken.

## **Financial Effects**

11. This Order imposes no new financial requirements on business, and so no Business and Regulatory Impact Assessment has been undertaken.

**Justice Committee**

**13th Meeting, 2016 (Session 5), Tuesday 20 December 2016**

**Feedback from the Justice Sub-Committee on Policing**

**Note by the clerk**

**Introduction**

1. The Justice Committee agreed at its meeting of 13 December that a paper should accompany any future agenda item on the feedback from the Justice Sub-Committee on Policing.
2. The Justice Sub-Committee on Policing met on 15 December 2016 to agree the content of its letter to the Justice Committee on Police Scotland and the SPA's financial planning for 2017-18.
3. The letter is attached at Annexe A.
4. The next meeting of the Justice Sub-Committee on Policing is scheduled for Thursday 12 January 2017, when it will discuss its future work programme.



The Scottish Parliament  
Pàrlamaid na h-Alba

## Justice Sub-Committee on Policing

Margaret Mitchell MSP  
Convener  
Justice Committee

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By email

15 December 2016

Dear Margaret

### **Financial planning: Police Scotland and the Scottish Police Authority**

The Justice Sub-Committee on Policing agreed, at its meeting on 10 November 2016, to undertake pre-budget scrutiny of the Scottish Police Authority (SPA) and Police Scotland's financial planning for 2017-18, and to write to the Justice Committee setting out its views.

The Sub-Committee took oral evidence from Police Scotland, the Scottish Police Authority, the Scottish Police Federation (SPF) and the Association of Scottish Police Superintendents (ASPS) on 24 November and from the Cabinet Secretary for Justice, Michael Matheson on 8 December. The Sub-Committee also considered written evidence provided by the witnesses and from Unison Scotland.

The Sub-Committee reports to the Justice Committee as follows—

### **Introduction**

Since 1 April 2013, Scotland has had a single national police force. Reforms included new funding arrangements. The Scottish Government provides funding under the following budget lines:

- Scottish Police Authority – the SPA in turn passes on most of the budget to Police Scotland, whilst retaining a proportion to cover its own services and running costs



- Police Central Government – budget for police reform and other elements of national police funding
- Police Pensions – budget to meet the full pension costs of retired police officers (the sum actually provided is determined by the amount required to meet pension costs)

In addition, local authorities retain the ability to provide additional funds to supplement policing in their areas and Police Scotland can levy charges when providing some goods and services.

The Sub-Committee echoes the view expressed by the Cabinet Secretary for Justice, Michael Matheson, at his evidence session on 8 December, that—

“Police officers and staff throughout Scotland do great work in our communities every day, and many parts of our police service are world class.”<sup>1</sup>

Our findings on the financial planning arrangements of Police Scotland and the SPA for the coming year are not a criticism of the continued hard work and dedication of those working for the police service.

The purpose of our investigation and findings is to ensure that the police service has sufficient resources and an effective sustainable financial management model to enable it to continue to provide the same high quality service that people have come to expect.

### **Forecast over-spend for 2016-17**

The Scottish Government has committed to protecting the police revenue budget in real terms for the entirety of the current parliamentary session. The Sub-Committee investigated whether this commitment provides the necessary resources for Police Scotland to carry out its role effectively.

Andrew Flanagan, Chair of the SPA, told the Sub-Committee that whilst the commitment provided some reassurance the SPA “... still have financial challenges and we are trying to work out how we can live within the commitment”.<sup>2</sup>

In 2015-16 Police Scotland overspent its 2015-16 budget by £8.1 million and is forecast to overspend its 2016-17 funding allocation by £17.5 million. The SPA Board considered a report at its 27 October 2016 meeting ([Financial Performance Report, Period 5 \(2016/17\)](#)) which set out information on areas of predicted over and underspend in relation to the current 2016-17 budget. It forecast an overspend of £17.5 million for 2016-17 (with a larger overspend in the resource budget being mitigated by a predicted underspend in the capital budget).

Chief Superintendent Gordon Crossan of the ASPs told the sub-committee that, if it had not been for an additional £55 million of reform money being provided Police Scotland’s financial position would be worse, he said—

“There is also reform money in the budget. The current £17.5 million overspend and the capital budget include approximately £55 million of reform money. I suggest that

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<sup>1</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 2.

<sup>2</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 2.

we are about £80 million short of a sustainable budget to deliver the policing that the public expects.”<sup>3</sup>

When Mr Flanagan was asked to provide the Sub-Committee with some reassurance that the forecast overspend would be reduced, he could not, saying—

“We will not see a reduction in that figure in the current year. Over a timeframe of two to three years, we can bring it to within the financial commitments that the Government has made to us.”<sup>4</sup>

He explained that the reasons for this were that some cost savings were taking longer than expected, and that 90% of costs were “people costs”,<sup>5</sup> which could not be reduced, such as the fixed number of police officers, the increase in wages and salaries, and the increase in national insurance contributions.

The Sub-Committee heard that there would be full cost recovery of the £17.9 million paid to Accenture as a result of the cancellation of the i6 programme. John Foley, Chief Executive Officer of the SPA confirmed that: “... all public money that was spent on the project has been recovered”, and that Police Scotland had received: “a substantial payment at the end of August” and was “scheduled to get another payment at the end of March”.<sup>6</sup>

Responding to questioning whether every single cost was accounted for, in particular: “Every man hour spent, every meeting that was held”,<sup>7</sup> the Cabinet Secretary responded that: “I can give you an absolute assurance that there was no financial detriment to the public purse”, adding that: “with regard to the money that was spent by the SPA and Police Scotland for Accenture to develop i6, there was no loss to the public purse.”<sup>8</sup>

The Cabinet Secretary indicated that recouping these funds may reduce the forecast overspend, stating that: “The SPA is forecasting an overall budget overspend for the current year of around £17.5 million, although the settlement that is linked to the i6 information technology project is likely to reduce that to some extent”.<sup>9</sup>

**Conclusion: The Sub-Committee notes the Cabinet Secretary’s evidence that the forecast overspend of the 2016-17 budget may be reduced. However, evidence from policing bodies suggesting that levels of basic police funding are currently insufficient is a cause for concern.**

## Reform budget

When the Scottish Parliament passed the Police and Fire Reform (Scotland) Act 2012, to create a single police force, it agreed that 2015-16 would effectively mark the end of the

<sup>3</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 4.

<sup>4</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 4.

<sup>5</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 3.

<sup>6</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 17.

<sup>7</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 18.

<sup>8</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Cols. 18-19.

<sup>9</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 3.

time-limited police reform budget. However, for the 2016-17 budget the Scottish Government allocated an additional £55 million of reform money to Police Scotland.

A concern was raised by Gordon Crossan of ASPS about the need for this additional funding. He told the Sub-Committee that: “If £55 million of reform money is going in to prop up policing, that tells me that the current budget is not sufficient.” He asked for a 2017-18 budget that meets current needs, saying—

“Give the SPA and Police Scotland a budget that reflects what is needed to deliver policing now, then hold us accountable for delivering on that, rather than giving us a budget that is not sufficient to deliver policing and has to be propped up by reform money.”<sup>10</sup>

The Cabinet Secretary explained that although Police Scotland had been operational for over three years there was still some work to do to get the right mix of staff and expertise, stating that: “... we have not seen the transformation within the organisation”.<sup>11</sup>

When asked whether reform money would be provided in next year’s budget to assist that transformation Mr Matheson explained that whilst he had previously extended the reform budget by one year, he could not confirm prior to the 2017-18 budget being published whether any reform money would be allocated this year.

**Conclusion: It is clear that Police Scotland is still in transition. The 2017-18 budget should be sufficient for it to make the necessary changes to its staffing complement, ICT and estate to enable it to meet current challenges.**

### Long-term financial strategy

The written and oral evidence from the SPF, ASPS and the written evidence from Unison Scotland focused on a number of issues currently affecting those they represent. There was a clear message within that evidence that they wanted to see urgent action taken to address these concerns. The written and oral evidence from Police Scotland and the SPA focused more on the longer-term financial planning work, ‘policing 2026’, that is being undertaken.

The Sub-Committee welcomes Police Scotland’s appointment of David Page as Director of Corporate Services, Strategy and Change to address the wider challenges of changing demand, transformational change and achieving financial sustainability, and looks forward to considering the detail of that strategic work in due course.

Mr Crossan told the Sub-Committee that he welcomed Mr Page’s appointment, saying that: “Previously, I had no confidence about moving forward, but I do now”.<sup>12</sup>

Whilst information about the current work being undertaken on the 2026 police strategy provided useful context, the focus of the Sub-Committee’s evidence session was financial planning for 2017-18, an exploration of the issues currently affecting staff and officers due to financial constraints, and how these might be addressed. Following the evidence

<sup>10</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 5.

<sup>11</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 20.

<sup>12</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 9.

session with the SPA and Police Scotland the Sub-Committee is left unclear about the short-term measures that are being taken to address current issues.

**Conclusion: The appointment of Mr Page and the work being undertaken to deliver a long-term sustainable financial strategy are welcome. The Sub-Committee's expectation was that Mr Page and the SPA would address the immediate financial concerns raised by the union representatives during the evidence session and in written evidence and it was therefore disappointing that no measures to address immediate issues were proposed.**

## Communication

The written evidence from the three unions representing those working for Police Scotland indicated a strong feeling of being less involved in budget planning discussions than they had been previously.

The SPF told the Sub-Committee that it had “not been involved in any discussions”, and added that there was “a desire to exclude us from such considerations”.<sup>13</sup> Whilst UNISON Scotland said that its: “police staffs branch has had no financial update and has been excluded from finance and investment meetings”, and added that “Any SPA pretence about openness and transparency has been abandoned”.<sup>14</sup>

In its written submission the ASPS said that whilst “specific discussions” had not taken place “the association has had regular conversations with PSoS [Police Scotland] and SPA around the present financial challenges and those lying ahead”.<sup>15</sup>

In response to these views, Andrew Flanagan, Chair of the SPA, confirmed that union representatives were not involved in some financial discussions due to a recommendation that he had made as part of the recent Review of Governance in Policing, which was—

“... that the meetings of the financial and investment committees and, in fact, all the sub-committees of the board should be held in private, as we would not make any decisions in them. They were working groups to go into details, and all decisions would be reserved for the board. The board meetings will now be held in public on all occasions, which means that the public and stakeholders who are interested can go to them and hear the board's deliberations.”<sup>16</sup>

In December 2015 the Auditor General reported that incomplete records and poor financial management had delayed the audit of the SPA's accounts and that substantial corrections were needed. The Auditor General recommended that the SPA and Police Scotland collectively provide stronger leadership in strategic and operational financial management. In response David Page's role as the Director of Corporate Services, Strategy and Change was created.

Mr Page explained that he had given a commitment to “establish better forums” of communication and provided details of a recent meeting with representatives of the SPF

<sup>13</sup> Scottish Police Federation written submission, page

<sup>14</sup> UNISON Scotland written submission, page 2.

<sup>15</sup> ASPS written submission, page

<sup>16</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 10.

and Unison Scotland where they discussed “the planning around how we can achieve efficiencies, transform the back office and link the financial position with the 10-year strategy and technology”.<sup>17</sup>

John Foley confirmed the meetings that the SPA had held, that others were planned, and that some meetings had not taken place yet: “partly because we do not have enough detail to engage fully on the budget for next year”.<sup>18</sup>

This view was reiterated by the Cabinet Secretary, who confirmed to the Sub-Committee that financial planning meetings about the long-term financial strategy between Police Scotland, the SPA and staff representative organisations had taken place, and that—

“When the draft budget is published, I expect Police Scotland and the SPA to engage with trade unions and staff representative organisations on planning and taking forward the budget at a localised level”.<sup>19</sup>

**Conclusion: The implications of the decision by the SPA that its Finance and Investment Committee should discuss budget and financial issues privately has left staff and officers feeling that they have less input to the budget decision making process. It is incumbent on Police Scotland and the SPA to ensure that its employees are confident that the financial management process is robust and informed, particularly given the Auditor General’s findings in last year’s audit about “poor financial management”.**

## Financial demands

The Sub-Committee heard about financial challenges in a number of areas within Police Scotland. Some had been inherited, such as an ageing IT infrastructure and estate, and some were as a result of financial decisions, such as the reduction in staffing levels.

## IT and estate

### *i6 efficiency savings*

In its written submission to the Sub-Committee the SPF indicated that financial constraints meant that Police Scotland did not have enough capital resource to invest in both the care and maintenance of its estate and upgrading its IT capability, and said that greater investment was needed for both—

“Information received by the SPF suggests the level of investment needed to upgrade the police estate to a reasonable standard sits in the region £200 Million. Quite simply this is a crisis that needs urgent attention.”<sup>20</sup>

The Scottish Government expects Police Scotland to achieve efficiency savings of £1.1 billion between 2012 and 2025-26. The implementation of a single IT system, known as the i6 programme, was expected to contribute to achieving those efficiency savings.

<sup>17</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 7.

<sup>18</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 6.

<sup>19</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 16.

<sup>20</sup> Scottish Police Federation, written submission, page 2.

Gordon Crossan of ASPS told the Sub-Committee that—

“I have significant concerns that many of the savings that were predicted were dependent on the IT solution that has not materialised but our budget is still expected to reflect those predicted efficiency savings.”<sup>21</sup>

In response to questions about whether the expected efficiency savings of £100 million in 2016-17 and £101 million for 2017-18, from moving to the i6 programme would be realised, Mr Matheson told the Sub-Committee that: “It would be wrong to categorise i6 as being the way in which the savings were to be achieved.” Mr Matheson went on to explain that—

“... i6 was not the tool that would deliver the savings, because a significant amount of them had already been achieved, and we are on course to hit the 2025-26 target.”<sup>22</sup>

**Conclusion: The Sub-Committee notes the different evidence on the importance of achieving improvements in the ICT systems as a basis for Police Scotland achieving efficiency savings. Whilst it is regrettable that the expected efficiency savings of a single ICT system will not be realised the Sub-Committee welcomes confirmation that Police Scotland is on target to meet its £1.1 billion efficiency savings by 2025-26. The Sub-Committee looks forward to seeing the detail of how this is to be achieved.**

#### *Effective ICT system*

The Sub-Committee heard how new and emerging areas of crime are proving challenging for Police Scotland’s current IT system. A key area being cybercrime. Andrea MacDonald of the SPF explained how a lack of investment in Police Scotland’s ICT system was impacting on the ability of police officers to tackle cybercrime, saying that: “For us to police that, we need an efficient ICT system, but we are still struggling, even with the basics.”

She outlined some of the inefficiencies of the current system and suggested that a single IT system would be more efficient—

“We do not have a single input so, when an officer makes an arrest, they might have to input the same details six, seven or maybe more times into different systems. That keeps officers off the street for longer.”<sup>23</sup>

Chief Superintendent Crossan of ASPS described the importance of an IT system that enables staff to improve the service they are providing, the ideal being a system which will: “... meet the challenges that are coming over the hill relating to cyber and other types of crime”, he added that it was: “fundamental” to invest in “ICT, training and the wellbeing of our staff”.<sup>24</sup>

<sup>21</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 4.

<sup>22</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 20.

<sup>23</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Cols 11-12.

<sup>24</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Cols 12-13.

John Foley acknowledged that Police Scotland's IT infrastructure and estate both required: "considerable investment" but warned that whilst some IT improvements were underway: "... it will take a number of years to address all the matters that need to be addressed in relation to capital investment".<sup>25</sup>

With regards to the police estate, Mr Foley referred to an "additional £2 million in funding" that had been provided by the Scottish Government to invest in the estate and explained that consideration was being given as to how best to use those funds.<sup>26</sup>

Mr Matheson told the Sub-Committee that it was important to have the right mix of staff to tackle new and emerging crimes, saying—

"As the chief constable has stated, the new and emerging threats that we face—for example, around cybercrime—require the service to have the right type of expertise in its staffing complement to deal with the issues effectively, and the work and thinking on how to achieve the right staffing mix are key parts of the policing 2026 strategy".<sup>27</sup>

**Conclusion: It is essential that Police Scotland adapts to meet the challenges of tackling new crimes, such as cybercrime. To do so it must provide adequate investment in its ICT infrastructure and training to enable staff to provide an efficient and effective service, both now and in the future.**

### Reduced staffing levels

Since the creation of Police Scotland there has been a reduction in its civilian staffing complement. The Sub-Committee heard of the impact less staff and more demand was having on existing staff.

Unison Scotland stated in its written submission that there had been: "...nearly 2000 police staff jobs shed" since Police Scotland had been established and that as a result the remaining civilian staff were "carrying an increased workload".<sup>28</sup>

Andrea MacDonald of the SPF told the Sub-Committee that officers were doing work far in excess of the budget, which was "manifesting itself in more stress, higher absence levels and more problems at work" and she called for immediate action, saying that: "Our staff are at the point at which they do not have the capacity to give more to work even if they wanted to."<sup>29</sup> Gordon Crossan of ASPS agreed, saying that the additional pressure meant that: "... a significant amount of our staff are either off ill or off with work-related stress".<sup>30</sup>

Andrew Flanagan acknowledged the pressures on staff and told the Sub-Committee that the 'Policing 2026' strategy will consider both immediate and long-term solutions, saying it will give a: "... sense of the things that we need to do not only in the longer term, but in the

<sup>25</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 12.

<sup>26</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 11.

<sup>27</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 11.

<sup>28</sup> UNISON Scotland, written submission, page 2.

<sup>29</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Cols. 7-8.

<sup>30</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 18.

more immediate phase with regard to the direction in which we go and the steps that we take first to alleviate some of the issues and problems”.<sup>31</sup>

In response to questions about concerns around the reduction in civilian posts and whether the Scottish Government remained committed to retaining police officer numbers, Mr Matheson said that: “the right balance between civilians and officers in order to get the correct mix of staff have not yet been achieved”,<sup>32</sup> and that this was being considered as part of the ‘Policing 2026’ strategy. In relation to police officer numbers, Mr Matheson stated that—

“In the present financial year, we have made it clear to Police Scotland that we expect it to maintain the commitment to having about 1,000 extra police officers. I am also clear that the service in the coming years must reflect the changing demands that it faces. Once Police Scotland has completed that piece of work, we will have an opportunity to discuss what that might look like in the future.”<sup>33</sup>

**Recommendation: The Sub-Committee recognises the changing nature of Police Scotland’s work and looks forward to considering staffing complement proposals once the ‘Policing 2026’ strategy is published. The Sub-Committee notes that the Scottish Government’s approach seems to move away from its current commitment to maintain 17,234 police officers. Given the urgent nature of the concerns raised by all three unions, we recommend that Police Scotland and the SPA prioritise this part of the 2026 strategy and communicate with staff about their intentions as soon as possible.**

### **Non-criminal work**

The Sub-Committee heard that the police service is facing “unprecedented levels of demand”,<sup>34</sup> especially in dealing with non-criminal matters, which are responsible for about 80% of its work. In particular assisting those with mental health issues was a very resource intensive area of work, which might more appropriately be undertaken by the health service.

Andrea MacDonald of the SPF told the Sub-Committee that a combination of a reduction in staff and an increase in demand meant that: “We have a workforce that is stretched to breaking point”, she described the morale of the police staff and the police officers as “extremely low”.<sup>35</sup> Chief Superintendent Gordon Crossan agreed, adding that—

“The biggest risk to Police Scotland is that, as our officers are put under more and more pressure to deliver more and more services, the discretion of effort that they get now will be taken away from them”.<sup>36</sup>

When asked about the impact that increased demands were having on staff, Andrew Flanagan admitted to: “an enormous amount of pressure in the system” in relation to non-

<sup>31</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 19.

<sup>32</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 11.

<sup>33</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Cols. 12-13.

<sup>34</sup> Scottish Police Federation, written submission, page 1.

<sup>35</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 20.

<sup>36</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 17.



crime related areas, such as missing persons cases, and said that “support systems and tools”<sup>37</sup> were needed to assist staff. He added that the solution was not to increase the police budget, but the health service budget instead, saying that: “It would be far better for the NHS to have additional funding to meet the needs”.<sup>38</sup>

Mr Matheson added that the challenges facing Police Scotland were due, in part, to it being the only: “out-of-hours service”. He told the Sub-Committee that the solution was for public services to work together and that the Scottish Government was willing to assist Police Scotland to: “foster greater collaboration within the public sector to meet some of those demands”.<sup>39</sup>

**Conclusion: The Sub-Committee appreciates the importance of Police Scotland’s role as the ‘service of first response and last resort’, and understands the increasing resource pressure this brings. We welcome the Scottish Government’s offer to assist the relevant public bodies to collaborate to provide this service and hope that sufficient funds should be provided to enable the health service and the police service to fulfil their respective roles.**

### **VAT liability**

Local police and fire services had previously been exempt from paying VAT, but Police Scotland is not, as it is a national body.

Andrea MacDonald of the SPF described the UK Government’s decision to ask Police Scotland to pay VAT as “unfathomable”, as it: “has now set a precedent with its proposals for academy schools and the National Crime Agency, which will not pay VAT”.<sup>40</sup>

When asked about the impact on the police budget of paying VAT on services and materials, Andrew Flanagan clarified that the VAT is managed through the reform budget and not from within Police Scotland’s direct budget, but estimated that the SPA: “expect this year’s unrecoverable VAT to be in the order of £25 million”.<sup>41</sup>

The Cabinet Secretary provided details to the Sub-Committee of the financial impact on Police Scotland of paying VAT, saying that: “... since its creation, Police Scotland has paid more than £76.5 million in VAT”.<sup>42</sup>

The Cabinet Secretary added that the expected VAT that will be paid over the lifetime of the emergency mobile communications system that will replace the police Airwave system, is “... likely to be in the region of £64.7 million”.<sup>43</sup>

**Conclusion: The Sub-Committee appreciates the impact that paying £25 million of VAT this year will have on public sector finances and supports ongoing efforts to resolve this issue.**

<sup>37</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Cols. 18-19.

<sup>38</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Cols. 22-23.

<sup>39</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 13.

<sup>40</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 24.

<sup>41</sup> Official Report, Justice Sub-Committee on Policing, 24 November 2016, Col. 24.

<sup>42</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Col. 3.

<sup>43</sup> Official Report, Justice Sub-Committee on Policing, 8 December 2016, Cols. 11-12.

Yours sincerely

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