



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

25th Meeting, 2018 (Session 5)

Tuesday 2 October 2018

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

1. **Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012:** The Committee will take evidence from—

Chief Superintendent Mark Hargreaves, Head of Professional Standards, Police Scotland;

Lindsey McNeill, Director of Governance and Assurance, Scottish Police Authority.

2. **Pre-Budget Scrutiny:** The Committee will take evidence as part of its Pre-Budget Scrutiny from—

Fiona Eadie, Secretary, Procurators Fiscal Society Section, FDA Union;

Stephen Murray, Crown Office and Procurator Fiscal Service Branch, and Brian Carroll, Scottish Courts and Tribunals Service Branch, PCS Union;

and then from—

Chris McCully, Development Co-ordinator, Criminal Justice Voluntary Sector Forum;

Euan McIlvride, Casework Team, Miscarriages of Justice Organisation Scotland;

Stuart Valentine, Chief Executive, Relationships Scotland;

Tom Halpin, Chief Executive, SACRO.

3. **European Union (Withdrawal) Act 2018:** The Committee will consider a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—

The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018;

The International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018.

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The papers for this meeting are as follows—

**Agenda item 1**

Paper by the clerk - Police and Fire Reform (Scotland) Act 2012 J/S5/18/25/1

Private paper - Police and Fire Reform (Scotland) Act 2012 J/S5/18/25/2 (P)

**Agenda item 2**

Paper by the clerk - Pre-budget scrutiny J/S5/18/25/3

Private paper - Pre-budget scrutiny J/S5/18/25/4 (P)

**Agenda item 3**

Private paper - EU (Withdrawal) Act 2018 J/S5/18/25/5 (P)

## Justice Committee

25<sup>th</sup> Meeting, 2018 (Session 5), Tuesday 2 October 2018

### Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012

#### Note by the clerk

#### Introduction

1. The Scottish Parliament's Justice Committee is undertaking post-legislative scrutiny of the [Police and Fire Reform \(Scotland\) Act 2012](#). The 2012 Act created a single police service and a single fire and rescue service, replacing the eight police forces and the eight fire brigades that had existed previously.
2. The Committee is to examine whether:
  - the policy intentions of the Police and Fire Reform (Scotland) Act 2012 have been realised and are being delivered in relation to the police service and the fire and rescue service; and whether
  - any further policy or legislative changes are required to improve the effectiveness of the Police and Fire Reform (Scotland) Act 2012.
3. There will be one panel evidence session on 2 October. The purpose is to explore whether the legislation and the policy intentions of the reform of the police and fire and rescue services are being met. The panel will focus on the police complaints handling process.

#### Justice Committee consideration

4. At its meeting on 2 October 2018, the Committee will hear from one panel of witnesses. This is the Committee's third evidence session on the 2012 Act. The panel will comprise representatives of the Scottish Police Authority and Police Scotland. Written submissions from the witnesses can be found [here](#).
5. At its meeting of 18 September 2018, the Committee held a roundtable evidence session. It heard from Chief Superintendent Ivor Marshall, President, Association of Scottish Police Superintendents, Councillor Elena Whitham, Spokesperson for Community Wellbeing, and Mike Callaghan, Policy Manager, COSLA, Denise Christie, Scottish Regional Secretary, Fire Brigades Union Scotland, Sandy Brindley, Chief Executive, Rape Crisis Scotland, and Professor Nick Fyfe, Founding Director, Scottish Institute for Policing Research.
6. At its meeting on 25 September 2018, the Committee heard from two panels of witnesses. It heard from Police Scotland, Fife Council, and West Lothian Council, and then from the Auditor General for Scotland, and Her Majesty's Inspector of Constabulary in Scotland.

7. The Committee's remaining evidence sessions on the 2012 Act are scheduled for 23 and 30 October, and 6 and 13 November 2018.
8. Official Reports of all meetings will be published on the Committee's [webpage](#).

## Justice Committee

25th Meeting, 2018 (Session 5), Tuesday 2 October 2018

### Pre-budget scrutiny of the Scottish Government's forthcoming draft budget for 2019-20

#### Note by the clerk

#### Introduction

1. Following work undertaken by the Finance and Constitution Committee, the way in which committees conduct scrutiny of the Scottish Government's draft budgets has changed. This will no longer be a process which involves a short period of scrutiny at the point when the draft budget is published (usually in December each year). Now, committees are expected to ensure that they ask budget-related questions during all of the work they carry out in a calendar year, such as scrutiny of bills, their own inquiries etc.
2. A summary of their work is then produced and published at least 6 weeks in advance of the Scottish Government's draft budget (i.e. around late October/early November). This will be supplemented with analysis and recommendations from each committee on what they would like to see the Scottish Government prioritise within the relevant policy portfolio. This is called a **pre-budget report**.
3. The pre-budget report should set out the Committee's views on the delivery, impact, and funding of existing policy priorities and any proposed changes, and how these should be funded. The aim is to influence the budget when budget priorities are being set. Committees should seek to influence the budget through constructive dialogue with Ministers, public bodies and other stakeholders as part of this process.
4. The Justice Committee is currently conducting its pre-budget scrutiny and will produce a pre-budget report in due course. On policing matters, this will be informed by a contribution from the Justice Sub-Committee on Policing which will report its findings and views to the Justice Committee.

#### Call for views

5. To inform its work, the Justice Committee launched a [call for views](#) and has received over a dozen submissions. The submissions for today's meeting are set out in the **Annex** to this paper.
6. The particular focus in the call for views was as follows:
  - What is your view on the current trends in funding in the justice portfolio and the Scottish Government's rationale for these?
  - What is your view, in particular, on the Scottish Government's proposals for spending on the Crown Office and Procurator Fiscal Service? This includes recent announcement of an additional in-

year budget of £3.6million to fund the recruitment up to 140 permanent staff.

- What is your view on the level of current funding and planned spend on the rollout of electronic monitoring to ensure that the courts, prisons and Police Scotland have sufficient resources to provide for an enhanced service in all parts of Scotland? Additionally, is sufficient funding provided to third-sector and voluntary groups who provide services in relation to people who have such a device fitted as well as helping people with prior convictions or who have been accused of a crime?
- What funding issues arise more generally from the work of third-sector and voluntary groups who operate in the civil and criminal justice systems, especially in terms of preventative spend?

## WRITTEN SUBMISSIONS FOR TODAY'S MEETING

### PCS Scotland

As part of the pre- budget scrutiny by the Justice Committee in the Scottish Parliament the Public and Commercial Services Union (PCS) who have members in the Crown Office and Procurator's Office (COPFS), the Scottish Courts and Tribunal Service (SCTS) and the Scottish Prison Service (SPS) with a combined membership of 1986 staff welcome the opportunity to submit views on the following questions.

#### **What is your view on the current trends in funding in the justice portfolio and the Scottish Government's rationale for these?**

The increase in funding is very welcome and we are happy to see the Justice system targeted as a priority for the government. This union has canvassed for more investment from Holyrood for many years and we are pleased that our concerns have now been heard. The austerity programme inflicted on the department, for so many years, saw areas in COPFS being stretched to the full and had a demoralising effect on the workforce.

PCS SCTS Branch noted that the 2018-19 budget allocation for SCTS had been set at £117.7m in the Budget (Scotland) Bill published on 26 January 2018.

Whilst we recognise the settlement was an increase over the previous year's budget of £108.6m, this still presents challenges over the coming year to SCTS to run within budget. Efficiencies are to be identified, to ensure business can be managed within the budget for 2018-19. Having said that, PCS SCTS Branch are aware this does **not** mean closing courts or running a VR scheme, which we very much welcome on both counts. We are also aware that a Financial Strategy is to be developed and agreed to consider longer-term options to best manage court and tribunal business in the face of ongoing financial pressures and PCS SCTS Branch would expect to be consulted on that.

The total budget for 2017-18 for SCTS stood at £108.6m. In addition to this, we understand that Scottish Government had made clear that a further £1m expenditure could be incurred, to ensure that the effects of reductions in retained fines income were mitigated.

Projected expenditure for the year end was that the full budget for the year, would be met, including the additional £1m.

Continuing backlog maintenance, although being tackled, is still a concern but PCS SCTS Branch also welcome additional financial resource for the Inverness Justice Centre, currently being built and improving the accommodation at Kirkcaldy which will take that location forward to being a Justice Sector model and will improve accommodation not only for staff but will also improve accommodation and services for the public in these areas.

Finally the budget settlement for all organisations must include sufficient funding specifically earmarked to meet staff pay increases. Although all justice sector organisations were able to deliver better pay increases than in previous years they did not all make the maximum awards available under pay policy. All three faced problems with financing awards to the same level as elsewhere such as Scottish Government Main due to budget constraints. The First minister and the Cabinet Secretary for Finance have made commitments to staff about restoring the value of public sector workers pay. These commitments must be met or staff morale and service delivery will suffer as a result. Further it cannot be traded off for cuts elsewhere in these services and so pay settlements must be fully provided for in budget settlements.

**What is your view, in particular, on the Scottish Government's proposals for spending on the Crown Office and Procurator Fiscal Service? This includes recent announcement of an additional in-year budget of £3.6million to fund the recruitment up to 140 permanent staff.**

PCS local branch within COPFS very much welcomes the increase in funding which will lead to recruitment for increased staffing. These extra resources will now give COPFS the tools to improve its service to the public in a changing environment. In these changing times, crimes have become more complicated with an increase in computer based crime and also increases in sexual offences and indecent images found on computers. These are areas which can invariably take longer to investigate and prosecute. The extra finance will also allow COPFS to invest in better IT systems to assist not only the staff but will assist the public in general to have a better experience of the justice system.

Although PCS SCTS Branch are aware of this welcome funding for COPFS, there has also been an increase in the expected expenditure for SCTS to £125.9m – following confirmation of an additional £2m funding from the Scottish Government to support investment in technology and in recognition of continuing high levels of serious sexual offence indictments registered in the High Court. This money, as PCS understands the position to be, is to reduce waiting times in cases coming to court and also to improve communication as to progress of cases with victims. Although all very welcome and necessary, these issues for PCS will not go away and require to be addressed year on year. Retained Fines Income has not met expected levels, so there is currently an unexpected shortfall of up to £1m. This reliance on fines (and fees) income is a risk for SCTS and PCS contend that Justice should be funded from source, not taking this into account and any income then received from these sources, can be or could be passed on to Scottish Government, to offset any expenditure incurred. There is also a conflict of interest in any organisation for Government relying on income they collect, to fund the services they provide. If the focus of direct measures being used to deal with cases is continued, like, for example, Police Warnings, then it is likely to be the case income from this area will always be reduced.

With the pressures that are currently on SCTS and Justice Partners, PCS feel that the need to increase funding is likely rather than any savings being made, as PCS SCTS Branch believe that SCTS is currently running on the very least they can, having already undertaken very extensive measures, in the not so recent past, to

ensure the services they provide are run as efficiently and as effectively as possible. Any further reductions in budget, would have a significant detrimental impact on services being provided by SCTS to the people of Scotland.

We would also just add that PCS SCTS Branch are of the view that the increase in funding for COPFS is bound to have an effect on the throughput of business and the type of business that SCTS will then require to administer, whether that be through courts and trying to deal with a possible increase in business being brought to court or indeed in dealing with an increase in Fines Enforcement work, if cases marked to be dealt with by Direct Measures like Fiscal Fines, for example so additional pressures could be put on both or one or other of these pressure points as a result.

**What is your view on the level of current funding and planned spend on the rollout of electronic monitoring to ensure that the courts, prisons and Police Scotland have sufficient resources to provide for an enhanced service in all parts of Scotland?**

PCS SCTS view would be that if electronic monitoring is to be used more extensively, then this will impact on SCTS, in that these cases, when imposed and if breached, require extensive administrative support to put the orders into effect or bring offenders back to court, to answer the breach and more often than not, then require the offender to be further monitored, requiring another order to be put in place for that to happen. It will take pressure off prisons, but that pressure then has to be subsumed elsewhere.

The administering of all this by the courts, is time consuming and also takes up court time, so PCS SCTS Branch would anticipate an increase in administrative duties and court rooms required to be able to deal with this work. This may then require an increase in people to be able to process this work or it will require, if digitalisation has the anticipated impact on efficiencies in other areas that people will require to be re-allocated to undertake this work. However, this requires planning and time to be put in place.

Further PCS SPS branch are of the view that extending electronic tagging will lead to the need for increased administration and so workloads in Scotland's prisons. The Scottish Prison Service is already experiencing the impacts of under-funding and this added requirement needs to be properly resourced.

## FDA

### SUBMISSION FROM PROCURATORS FISCAL SECTION OF FDA

Thank you for inviting the Procurators Fiscal Section of FDA to submit evidence in respect of the Justice Committee's pre-budget scrutiny of the Scottish Government's draft budget for 2019/20. We will restrict our response to item two on the call for evidence, namely:

“What is your view, in particular, on the Scottish Government's proposals for spending on the Crown Office and Procurator Fiscal Service? This includes recent announcement of an additional in-year budget of £3.6million to fund the recruitment up to 140 permanent staff.”

#### About us

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

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

The Procurators Fiscal Society is a section of the FDA and represents mainly legal staff, including the most senior lawyers, within the Crown Office and Procurator Fiscal Service (COPFS). The majority of prosecutors in COPFS are members of FDA.

#### The Draft Budget for COPFS 2019/20

FDA welcomes the in-year increase to the COPFS budget of £3.6m to fund the planned recruitment of up to 140 permanent new staff. It is important however to note the context of that increase follows several years of cumulative real terms cuts in our budget. Even by combining last year's budget (for 2018/19) of £108.4m resources and a capital budget of £3.6m (£112m total) with this additional in-year increase, that takes us to an annual equivalent of £115.6m. By way of contrast, in 2009-2010 the COPFS budget was £118.3m. If our budget had kept pace with inflation, by 2017 this would have amounted to [£150.8m](#)<sup>1</sup> – a difference of - **£35.2m and therefore a real terms cut of 23.3% in the COPFS budget.**

The Committee will recall that in evidence provided last year, we welcomed the recruitment that was taking place at that time and the move away from temporary, fixed term appointments, to permanently filling entry level and promoted vacancies. It has been indicated that this additional money will fund up to 60 new permanent prosecutors. That recruitment is welcome and much needed, but we hope to

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<sup>1</sup> Bank of England inflation calculator

demonstrate in this submission that that process may not be as straightforward or quick to deliver as might be expected.

The funding understandably comes with expectations of higher quality, timely service provision by COPFS in key areas of its business and the implementation of stretching Key Performance Indicators (KPIs). The concern of FDA relates to the organisation's capacity to deliver on those expectations in the short term.

Although recruitment has commenced and further drives are ongoing, the stark reality is that recruitment and enhanced vetting of the type properly required by COPFS of its employees before appointment is a time-consuming process. In all likelihood we will be nearing the end of this financial year before many of those recruited under this funding will take up post.

Once recruited, there requires to be time given to invest in training for new staff in order to develop their skill in prosecution practice. A former Solicitor General, Neil Davidson, noted in evidence to previous Justice Committee members in 2001 that "Fiscals do not grow on trees". He went on to say:<sup>2</sup>

"One must acquire experience in prosecution, which one can do only by appearing in court. There is no quick way of getting a collection of experienced deputies from anywhere other than from the Procurator Fiscal Service. There is a means of training people at a high level, which is not found in other areas, but it is the development of specialist skills"

He also said "So far, the Procurator Fiscal Service has been able to retain a high proportion of its employees. I know that that is not a complete answer, but ensuring retention is the way forward"

We will make further observations on the point of retention later in this submission.

Bringing in additional prosecutors to COPFS will not solve the problem overnight. This must be part of a sustained and long-term commitment from the Scottish Government to adequately resource COPFS to train and develop our staff to deal with the increasing numbers of serious and complex cases. As stated above, training and developing new staff to the standard required to deliver a professional prosecution service in Scotland takes time.

Unlike other government lawyers, in addition to the two years spent as trainee solicitors, COPFS has a further two year training grade (on a reduced salary scale) for new Deputies to be '*accredited*'. FDA supports an effective training programme for new Deputies, but does not support the accreditation process in its current form and does not accept that pay restraint should be an essential part of that process.

The training grade purports to recognise the anticipated training trajectory for new prosecutors before they become well-rounded prosecutors – and even then only in the most key, central elements of that role (it does not include, for example, experience in the investigation of sudden and/or suspicious deaths or in High Court

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<sup>2</sup> Justice Committees 1 and 2, Joint Meeting, 16<sup>th</sup> May 2001

or serious and organised crime preparation). They require to be coached and supported by experienced prosecutors working alongside them – and those experienced prosecutors require time to invest in that work. It is not unreasonable therefore to expect that it will take some two years or more before the full benefit of recruitment is felt, yet we see that expectations are high that performance improvements will be delivered well before that.

As indicated above, the issue of retention in COPFS is one that has been considered by previous members of the Justice Committee. At that time, a former President of the Procurators Fiscal Section of FDA, Richard Stott, described <sup>3</sup>that the sort of people who come in to the job do so because they have a commitment to public service. He observed at that time that there were a few who had left COPFS in order to join the Scottish [Government] legal department because of differences in pay. We now know from our members that a significant number of them have left in recent months in order to move to the Scottish Government, essentially on level transfer, but many of whom will be earning at least £10,000 more than they did as Procurators Fiscal.

We would suggest that the starting salaries and the relevant pay scales may not be competitive with those found both elsewhere in the public and in the private sector and would draw only inexperienced staff. In addition to which, the Scottish Government do not have the type of salary reduced ‘training grade’ (as explained above) that operates within COPFS.

FDA is concerned therefore that despite the welcome efforts of the Department to recruit more staff, at best this will not be a quick process and at worst it may not be possible to recruit in the numbers hoped for.

We are pleased to confirm that there is a positive and constructive relationship in COPFS between the Trades Unions and senior management and we operate on the basis of a Partnership Agreement. As part of our regular and ongoing dialogue with them we were aware that a business case for additional funding had been submitted for consideration by the Cabinet Secretaries for Justice and Finance. It was made clear to us during that process that the business case related to the recruitment of additional staff, not for greater increases in the pay of existing staff. FDA wishes to make it clear to Ministers that we consider the failure to remunerate staff within COPFS on a comparative basis with lawyers in other parts of Scottish Government demonstrates that they do not properly value the work undertaken by Scotland’s prosecutors.

There is value in the work undertaken by colleagues across the Scottish Government, but how can it be right that those who deal with vulnerable witnesses, victims of child sexual abuse and the prosecution in the public interest of some of the most serious and violent offenders in Scotland are valued and rewarded less than their Scottish Government counterparts.

Our final observation in relation to the additional funding and in respect of the budgets for 2019/20 and in subsequent years is that this will only really be

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<sup>3</sup> Col. 562 , Justice Committee 2, Meeting 6<sup>th</sup> November 2001

transformative if that level of commitment by Scottish Minister is maintained and developed in the future. The announcement of additional funding this year was a welcome injection of additional resource for COPFS, but it must not be a 'flash in the pan' boost and then followed by a gradual reduction in our budget.

The committee may recall that in previous discussions we have stated FDA's position to be that whilst we do not consider it appropriate for a trade union to dictate the details of any government's budget, we will always argue that the resources available have to match the service provision demanded of that organisation. This is true this year as much as in any year as questions will be asked about how those resources compare with demand and expectations of delivery. It follows therefore that either COPFS requires to be adequately resourced in this and subsequent years, or alternatively, political decisions are required of those in government to appropriately review the commitment required from the service and expectations of timescales for service improvement. There will be a choice about what they want the prosecution service of Scotland to deliver and when.

## Criminal Justice Voluntary Sector Forum

### **1. What is your view on the current trends in funding in the justice portfolio and the Scottish Government's rationale for these?**

CJVSF welcomes the general trend established by the Scottish Government of increasing the role played by community justice. A shift away from traditional, carceral models of justice towards ones that keep people out of prison and in their communities whenever possible is one that we welcome and that the evidence supports.

The Scottish Government has made a number of positive steps towards achieving this in the past decade and CJVSF welcomes that the Scottish Government has also made some funding available to do this. In recent years, this has taken the form of the money made available to support the transition to the new model of community justice and the funding provided to develop, support and run key national supports and services in the community.

More needs to be done, however, to complete the shift in resources from imprisonment to community. The total government spend on community justice remains but a small fraction of the total justice budget and the amount currently spent on community justice remains only about a tenth of the total amount spent on prisons and the prison service annually. If we are to increase the use of community sentences and to reduce the size of our unacceptably large prison population then we need to invest more money into our community justice system and reduce our reliance on imprisonment as a default response to crime.

The need for further investment in community justice services is all the more pressing given the government's proposed legislation on the presumption against short term sentences and electronic monitoring. If these developments result in an increase in the number of people subject to sentences or supervision in the community then there will necessarily be a need for more resources. We would therefore ask the Scottish Government consider making resources available to both statutory and third sector partners to ensure that sufficient support is available to achieve the goals of forthcoming legislation.

CJVSF also welcome the recent response of the Cabinet Secretary for Justice to the Justice Committee's inquiry into remand and the allocation of additional resources to support alternatives to remand is welcomed. Given the excellent work done by third sector in relation to alternatives to remand, as demonstrated to this Committee in the course of their inquiry, CJVSF would welcome consideration of how best the third sector can continue to contribute to this agenda in future.

### **2. What is your view, in particular, on the Scottish Government's proposals for spending on the Crown Office and Procurator Fiscal Service? This includes recent announcement of an additional in-year budget of £3.6million to fund the recruitment up to 140 permanent staff.**

CJVSF members did not express a view on this question.

**3. What is your view on the level of current funding and planned spend on the rollout of electronic monitoring to ensure that the courts, prisons and Police Scotland have sufficient resources to provide for an enhanced service in all parts of Scotland? Additionally, is sufficient funding provided to third-sector and voluntary groups who provide services in relation to people who have such a device fitted as well as helping people with prior convictions or who have been accused of a crime?**

If the changes to the availability of electronic monitoring (EM) proposed by the Management of Offenders Bill result in an increase in the number of people receiving community sentences then additional resources, beyond those already proposed, will need to be made available to meet that increased demand. If there are no additional resources then the system is in danger of becoming severely overburdened and this will put its effectiveness and the reductions in reoffending over recent years at risk.

One key stakeholder that the Committee's question does not mention in relation to funding are local Criminal Justice Social Work (CJSW) departments, which will need to be awarded additional resources if the introduction of EM is to be a success. While other statutory bodies have a role to play, it is CJSW who will be responsible for advising the court on the suitability of an individual for EM, as well as carrying out any supervisory elements of a community sentence, bail supervision or release on licence subject to EM. This is particularly important given the findings of the Scottish Government Working Group on Electronic Monitoring, which found, following a review of available evidence both nationally and internationally, that the provision of adequate support services was key to ensuring the effectiveness of EM. CJVSF would argue that the third sector is also ideally placed to help provide that support in partnership with support and supervision from CJSW. CJVSF would also welcome support being available for the families of those subject to EM given its considerable impact on domestic situations.

Funding for support will also need to be provided in a way that ensures EM is available and effective across the whole of Scotland. At present, the availability and use of EM, as well the supports available to those subject to it, varies considerably across the country and any funding will need to be administered in a way that ensures a universally accessible service.

In light of the variation identified above, any specific consideration of funding for third sector services for people subject to electronic monitoring is difficult and to our knowledge there is currently no funding or service whose main criteria is whether the individual supported will be subject to EM. The voluntary sector will, however, support people who are subject to EM in a wide range of circumstances at both the pre-trial and post-conviction stage. As such, we would refer the Committee to our response to Question 4 below.

**4. What funding issues arise more generally from the work of third-sector and voluntary groups who operate in the civil and criminal justice systems, especially in terms of preventative spend?**

There are a number of issues related to funding which affect the work of third sector organisations in the justice system.

Many voluntary sector organisations are subject to uncertain or short term funding arrangements. Awards of funding are frequently made only on a one year, sometimes even less. Voluntary sector providers are also subject to decisions on renewals of funding or decommissioning of services that do not leave sufficient time for them to plan appropriately, leading to considerable difficulties. These realities also mean that it is difficult to develop staff and organisations, as short time periods do not allow for proper planning, sustained training or building organisational capacity.

Staff are also faced with short term, insecure contracts, which have negative effects on staff moral and lead to a high turnover in staff amongst voluntary sector organisations. Uncertainty in funding also directly affects services users, as organisations are forced to turn away people from their services because they cannot guarantee that they will still be there to provide the service in future.

Related to the issues outlined above, CJVSF members have considerable concerns about the overreliance of both local and national funders on “pilot projects” that are then not mainstreamed into general justice budgets. This lack of sustainability applies even to services or programmes that have demonstrated their viability and have shown considerable results towards achieving improved outcomes for the people using them.

How local community justice services are funded also raises considerable issues for third sector organisations. CJVSF members report that changes to the funding formula for local community justice money and the pressures placed on local CJSW departments have meant that, increasingly, community justice budgets are only being used to provide statutory, local authority services. This, they argue, has led to the decommissioning of previously funded voluntary sector in favour of “in house” provision. While this is understandable in the context of strained CJSW budgets, it goes against the “mixed market” ideal for services and the focus on partnership identified by the Christie Commission as necessary to the successful future development of public services in Scotland.

CJVSF members fully support a focus on preventative spend but suggested that current funding priorities and awards tend to focus on outputs and numbers rather than on outcomes and the preventative potential of services. To achieve a truly preventative approach the public sector and Scottish Government departments also need to pool resources and engage in planning across departments to approach the problem of offending behaviour in a holistic manner. CJVSF members also observed, however, that there will remain a significant need for reactive spend but that this is not at odds with increasing our focus on prevention.

## **Miscarriages of Justice Organisation**

### **Miscarriages of Justice Organisation - Approach to this Consultation**

We approach this consultation from the perspective of an organisation whose function, and whose daily experience, is in the support of individuals who have suffered miscarriage of justice. Our position founds not only upon seventeen years' experience as an organisation, but also on the personal experience of our members (two of whom are exonerees who served sentences of imprisonment following wrongful conviction) and of our many clients. We also draw on the experience of our legally qualified staff, the senior of whom is a solicitor of some thirty-five years' standing.

We restrict our comment to those aspects of the consultation which address issues bearing on our own activity and experience. For this reason, we make no comment in response to the planned spend on the rollout of electronic monitoring, other than to observe, in general terms, that the allocation of limited resources requires careful consideration of the relative priority of competing claims to those resources.

### **Current Trends in Funding**

The current emphasis on the rights and interests of victims is one which we endorse, and consider appropriate. Subject to the caveat expressed at 3 below, we welcome the provision of meaningful funding for the support of victims at every stage of the criminal justice process.

If we are serious about this, however, we must recognise all classes of victims, both of crime itself and of failures in our criminal justice system. Unpalatable as the concept may be, we must recognise that the state is on occasion the author of serious injustice. It is incumbent on the state to address the consequences of this injustice, and to recognise this class of victim. Currently, the victims of miscarriage of justice are almost entirely overlooked in the provision of victim support resourcing.

This simply should not be so. The consequences for the victim of miscarriage of justice are life changing, and commonly life-long. The needs of exonerees (and equally of those wrongly convicted but unsuccessful at appeal), released into society after incarceration, are both extreme and unique. In combination, they are unlike the needs of any other victim group. They combine the practical requirements of human existence with the emotional and medical needs of sufferers of a very specific type of post-traumatic stress disorder. Additionally, they have suffered stigma, alienation, often financial loss, loss of status and employment, anxiety, depression and, commonly, physical and sexual abuse whilst in custody.

### **Proposals for Spending on the Crown Office and Procurator Fiscal Service**

If COPFS is currently under-resourced and requires additional staffing to fulfil its function then we can have no objection to its being provided with additional funding.

We are, however, deeply concerned to note the lack of any proposal similarly to increase funding for criminal Legal Aid. It is an open secret that the current level of

funding for criminal Legal Aid is wholly inadequate, that experienced solicitors are deserting this essential work - both in general and more specifically in the context of the duty solicitor schemes - and that they are not being replaced by new entrants to the profession. The consequence of this can only be the denial, to the more vulnerable, of access to justice.

We fully accept that the Faculty of Advocates, the Law Society of Scotland and the Bar Associations are entirely capable of fighting their own corner on this. For our purposes, however, the consequences of underfunding of criminal Legal Aid are manifest in the increasing numbers who seek our assistance because, simply, they have nowhere else to go. The interests of justice are not served by a widening of the gap between the theory and the reality of the concept of equality of arms.

### **Sufficiency of Funding Provided to Voluntary Groups**

The funding provided to this voluntary group is insufficient to sustain the services we provide. By way of context for that statement, we detail those services below:

Since 2001 we have provided support and assistance to individuals who have suffered miscarriage of justice in Scotland. Our service is holistic, in that it seeks to address the totality of the various, individual, needs of this group of people. We are the only organisation providing these much-needed services in Scotland. We have unparalleled expertise and experience in this field.

The need for, and the value of, the services we provide has long been recognised by the Scottish government, which has since 2004 exercised oversight of, and provided limited financial support for, our work. We fill a gap in service provision within the mainstream justice and healthcare systems. As this gap has widened, demand for our services has increased. Through this growing demand, and, separately, in improving our service standards to meet government aspiration, our workload has steadily and significantly increased. We have had no corresponding increase in our funding.

Our services fall under three headings: Aftercare, Legal Casework and Education.

Aftercare:

a) We care for the wrongly convicted on their release from prison, whether this be on exoneration by the Appeal Court or on completion of sentence. In simple terms, our approach to aftercare is holistic, comprehensive and flexible and has as its focus the successful reintegration of our service users into a society that, for most, presents challenges that they are unable to face unaided. Successful reintegration has manifest benefits both for the individual client and for society as a whole. Our experience teaches us that our service provision is often a life-long requirement.

b) The Miscarriages of Justice Organisation Aftercare and Support Project involves, at its initial stage, an assessment of the individual needs and expectations of each client whilst still in prison awaiting a pending appeal. An aftercare plan is then prepared to take account of specific needs in the areas of housing, benefit entitlement, medical care, psychiatric and addiction care. Once these initial needs

are identified and appropriate actions taken in anticipation of release, a development plan is formulated in respect of educational, employment and recreational opportunities. In terms of everyday practical problems and needs (such as arranging bank accounts and interactions with local government, utilities providers and the like), we offer proactive support in such as escorting clients to appointments and in liaising with third party agencies. The underlying principle of our service provision is that it is personal, relationship-based and founded on trust earned through continuity of access to and service by the client's individual caseworker. Relationship-building is at the core of our interaction with every client.

#### Legal Casework:

a) We assist clients, both in the course of serving sentences and post release, who are maintaining an objectively demonstrable claim to factual (as distinct from legally technical) innocence of the offence(s) of which they were convicted. Our work comprises researching, formulating and pursuing appeals against conviction. This work is undertaken entirely *pro bono*. There is a gap in the provision of Legal Aid which means, in simple terms, that in the vast majority of cases this is work that otherwise would not be done. This service seeks to provide access to justice which, without it, would be denied to our clients.

b) The most obvious objective in this is to secure the overturning of the client's conviction. To limit the definition of our service to this objective is, however, simplistic, and neglectful of other valuable and significant contributions both to the interests of our individual clients and to the wider interests of justice and of society. Every miscarriage of justice represents a denial of justice for everyone except the actual perpetrator - who, conversely, escapes justice. The victim of crime, the wrongly convicted, their respective families, the justice system and society in general - none receives justice.

#### Education:

a) Education - We draw our volunteer caseworkers from the law faculties of the universities in Scotland. In the 2017-18 session we have engaged 18 such volunteers. The nature of university legal education is, by definition, theoretical. It addresses the legal system as it is designed to operate. We offer our student volunteers an insight into the practical failures of the system which result in miscarriages of justice, an important element in their development as lawyers unavailable to them in their formal education. This is, we think, one of the most important aspects of the work of our casework department. Its value is recognised by the university law faculties who provide our student caseworkers; course credit is awarded for the training received with us and demand for placements with us exceeds our ability to supply. We receive, however, no funding from the universities.

b) Students receive, with legally qualified supervision, hands-on experience in the assessment and preparation of appeals in our ongoing casework. At its core, our training develops skill-sets equipped to recognise and to remedy errors in legal process as they arise. In a broader sense, we are also educating the lawyers who will inherit the legal profession and the criminal justice system and who will, through their experience with us, be better placed to influence both for the better. This is of

course a gradualist approach. Meaningful change will, however, only come through education of the policy-formers of the future. We consider our contribution to this as fundamental both to our ethos and to our mission.

The overarching purpose of our work is to reintegrate victims of miscarriage of justice as functioning, contributing, healthy members of society. Through our work with our clients' families we seek, first, to reintegrate them to the stability and support of that nuclear group. Success in this wider process provides benefits for society, in the avoidance of recidivism and of dependency - in various forms - on the resources of the state. Modest investment in our work has clearly identifiable preventative benefits, in addition to the personal and family benefits enjoyed by the clients themselves.

## **SACRO/Shine Women's Mentoring Service**

Sacro welcomes the opportunity to submit a view on the Justice Committee priority areas as part of pre-budget scrutiny process. The views of our senior team on priority areas 3 & 4 are detailed below:

**Question 3 - What is your view on the level of current funding and planned spend on the rollout of electronic monitoring to ensure that the courts, prisons and Police Scotland have sufficient resources to provide for an enhanced service in all parts of Scotland? Additionally, is sufficient funding provided to third-sector and voluntary groups who provide services in relation to people who have such a device fitted as well as helping people with prior convictions or who have been accused of a crime?**

As an organisation Sacro recognises and identifies with the funding constraints across all services in our current environment. Currently we have limited exposure to providing services to people with device fitted, with most of our involvement coming for provision of ISP and through-care services. We consider that funding to enable appropriate support for third sector organisations is critical in effective provision of both support and supervision to individuals and their families, where electronic monitoring is a key feature of their supervision.

**Question 4 - What funding issues arise more generally from the work of third-sector and voluntary groups who operate in the civil and criminal justice systems, especially in terms of preventative spend?**

There are a number of key funding issues which Sacro would identify as providing significant challenge in this area.

- Currently the majority of funding is short term in nature, which provides significant challenge in forward planning
- A significant proportion of the third sector funding in this area is contracted from Local Authorities, with a consistent risk of activity being taken in-house, with the sector losing funding at short notice
- Sacro believes significant benefit would accrue from taking a longer term approach, with a 5 – 10 year timescale for investment and planning being optimum in providing key gains and embedding positive behaviours
- We hold a core belief that investment in preventative activity is key action in reducing offending and re-offending, and provides material savings, efficiencies and community benefits on an ongoing basis.
- While we'd reiterate the benefits of longer term planning and investment, it should also be recognised the third sector has capacity to adapt quickly and be responsive to changing requirements on an ongoing basis

- In the current financial context, non-statutory activities are being significantly disinvested by commissioning authorities and this is directly having a negative impact on preventative activity.