Dear Sir

TACKLING CHILD EXPLOITATION IN SCOTLAND

Thank you for the opportunity to provide evidence for the second tranche call for evidence in the Public Petitions Committee’s inquiry into child sexual exploitation.

COPFS recognises the devastating impact of child sexual exploitation and the importance of the thorough investigation and robust prosecution of these offences. We will prosecute all such offences where there is sufficient reliable and credible evidence and it is in the public interest to do so, as it almost invariably is in cases involving sexual abuse of children.

COPFS have developed a team of expert prosecutors in the National Sexual Crimes Unit (NSCU) which specialises in the investigation and prosecution of serious sexual crimes across Scotland. All cases involving serious sexual offences are reported to NSCU for instructions. 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 cases.

This specialism is being replicated in local Sexual Offence Units around the country which work hard to ensure that cases reported to NSCU have been prepared to the highest possible standard.

There is a range of offences which can be prosecuted when a child is being sexually exploited which include:-

- Contraventions of section 1 (Grooming a person under 16), section 9 (Paying a person under 18 years for sexual services) and section 10 (cause a person under 18 to become a provider of sexual services or to be involved in pornography) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 ("the 2005 Act").
• Contraventions of section 52 of the Civic Government (Scotland) Act 1982 – possession, taking, making and distribution of indecent photographs or pseudo photographs of a child under 18.
• Contraventions of section 22 of the Criminal Justice (Scotland) Act 2003 (Trafficking for the purpose of prostitution or making or producing obscene material including any child under the age of 18)
• Contraventions of the Sexual Offences (Scotland) Act 2009 (“the 2009 Act”) including
  ➢ Section 1 (Rape)
  ➢ Section 18 (rape of a young child)
  ➢ Sections involving sexual assaults and penetration on older and younger children

Where a crime involving child sexual abuse is reported to COPFS great care and consideration will be given to libelling the most appropriate charge on the available evidence.

It is important to note that in cases which come under the definition of child sexual exploitation the most appropriate charge will not always be under the 2005 Act but may more appropriately be prosecuted under the 2009 Act. For example a child who has been groomed from the age of 13 and sexual intercourse commences when she is aged 14. As part of the grooming she is given alcohol and a mobile telephone with top ups. When she is 15 her carer realises that she is in a sexual relationship with the perpetrator and reports this to the police. This is not an unusual circumstance which would most likely be prosecuted under s28 of the 2009 Act (having intercourse with an older child) but with a narration of the circumstances of the grooming. The grooming behaviour may be difficult to prove by corroborated evidence given that it will have occurred in private. As part of the narration and/or the evidence at trial, it can be taken into account by the court at sentencing.

The Committee will no doubt be aware that sexual exploitation of children can have links to serious and organised crime and to Human Trafficking. COPFS encourages prosecutors to use all legislation at their disposal to its best and prohibitive effect, including using legislation to seize proceeds of crime thereby making breaching the law less attractive to criminals. Work is ongoing to legislate for an aggravation of crimes which are linked to human trafficking which will enhance the legislation already available to COPFS.

In relation to the particular questions asked, COPFS have provided responses on the enclosed annexe. We hope this information is of assistance to the Committee.

Yours sincerely

CATHERINE DYER
Crown Agent
What barriers exist to identifying, disrupting or prosecuting child sexual exploitation perpetrators? How might these be overcome?

- The starting point for any prosecution is normally a disclosure by the child of what has happened. It is well recognised that child victims vary in how and when they disclose the abuse that they have been subjected to. In some cases the child will not realise that what is happening to them is wrong and therefore may feel that there is nothing to disclose. At the point when the child realises that it is wrong, disclosure may still not follow immediately. Disclosure can be delayed for a number of years for a variety of reasons which could include; not wishing to upset other family members; a fear of not being believed; because of threats made to them; or a fear of splitting a family unit. Sometimes multiple disclosures will be necessary before the full extent of the abuse is known and sometimes that disclosure can happen over a number of years.
- Once the disclosure by a child or children is made and reported to the police, the investigation of the abuse and the perpetrators will begin. In Scotland all the essential elements of a crime must be corroborated which means that there must be two sources of evidence to prove the crime was committed and that the accused was the perpetrator. There can be a number of reasons why corroboration can be difficult to obtain. If the disclosure by the child has been delayed, even for a short time, opportunities for forensic and other types of evidence could have been lost. The majority of sexual offences take place in private and accordingly corroborating what actually took place can be difficult. The research for the Carloway Review supports the view that in crimes of a private sexual nature, such as rape, the abolition of the requirement for corroboration and the adoption of a separate evidential test such as a reasonable prospect of conviction would result in the Crown being able to take proceedings in many more of these serious sexual offences. The abolition of the requirement of corroboration may also have a significant impact on how the Crown can approach such cases. Prosecutors can and are frustrated where there is a credible and reliable witness but there is no evidence to corroborate the essential elements of the charge.
- There can also be barriers in dealing with cross border offences with other parts of the UK. While Scotland has jurisdiction over Scottish nationals who have committed specified sexual crimes\(^1\) in a country outside the United Kingdom it does not have jurisdiction over a similar crime if it was committed elsewhere within the United Kingdom. So for example if a Scottish national was to groom and then travelled to meet and rape a child in France, Scottish courts would have jurisdiction over both offences. If the same Scottish national had groomed, travelled to England and raped a child the Scottish court would only have jurisdiction over the grooming charge and not the rape.

\(^1\) S 55 of the Sexual Offences (Scotland) Act 2009
What difficulties exist around keeping looked-after children and young people (accommodated or at home) safe from CSE perpetrators? How might these be overcome?

This is a challenging area of criminality which all law enforcement agencies are aware of and pay particular attention to. The challenges include; the vulnerability of the victims and that they themselves do not see that they are victims; that these offences most usually happen in private and accordingly obtaining the legal requirement of corroboration can be problematic; that the victims are often hostile to the authorities including the police and prosecutor; and that their engagement with the prosecution process can be hindered by chaotic lifestyles.

Without commenting on specific examples the Committee will be aware that there have been successful prosecutions of persons involved in the sexual and physical abuse of children in a variety of institutions. The majority of these prosecutions have commenced some years after the abuse, when the victims have presumably felt more able to disclose what happened to them.

Sexual Prevention orders can be used to keep potential perpetrators away from children. Pre trial when the perpetrators have been identified, and the accused is unlikely to be remanded in custody, prosecutors will carefully consider appropriate bail conditions to protect both the victims and potential victims.

What barriers exist to combating perpetrators use of on line/social media? How might these be overcome?

- COPFS prosecute abusers of children who use on line/social media to carry out the abuse under a variety of statutory provisions and common law offences
- One of the barriers is the ever increasing sophistication of technology including the widespread availability of free deletion software. Perpetrators who use their computers for criminal purposes can now legitimately purchase software which will delete items and the history of the use of the computer. The software is such that nothing incriminating may be left on the computer.
- Similarly there can be a difficulty with examination and capturing of data on new style and password protected mobile telephones which can be a barrier to obtaining the evidence which could convict the perpetrator.

2 Including offences of lewd and libidinous conduct; Contraventions of S52 of the Civic Government (Scotland) Act 1982; S127 Telecommunications Act 2003; S23 and S33 Sexual Offences (Scotland) Act 2009 causing younger and older children to look at a sexual image; and S24 and S34 Sexual Offences (Scotland) Act 2009 communicating indecently with younger and older children.

www.copfs.gov.uk
What types of training has your organisation had on ways of identifying, disrupting or prosecuting CSE perpetrators

- COPFS have a number of training courses designed to assist prosecutors investigating and prosecuting child sexual offences. The training extends beyond legal and investigative guidance and advanced advocacy skills to understanding the emotional and psychological impact of sexual crime on its victims, the importance of which cannot be understated. Victims can have confidence that their cases are being handled by skilled prosecutors able to deal with the profound challenges, complexities and pitfalls inherent in the prosecution of sexual crimes.

- Available training courses include:
  - Sexual Offences Training – A two day course which is mandatory for those involved in the marking, investigation and prosecution of serious child sexual offences and includes a session on human trafficking
  - Evidential interviewing of children – two day course for those involved in the assessing and carrying out of child interviews
  - Advocacy – a general course delivered over two modules on the presentation of cases in court – the skills of which are transferable to child sexual offence cases
  - Precognition – a general two day course to improve, witness interview skills, and to produce quality precognitions – the skills of which are transferable to child sexual offence cases
  - Victims and Witnesses – a general two day course to ensure staff have knowledge and understanding of our commitment to victims and prosecution witnesses

- In addition there are e-learning packages on Sexual Offences, Medical Evidence in Sexual Offences and Victims and Witnesses

Have you used the 2005 and 2009 Acts to disrupt, prosecute, charge or convict perpetrators of CSE, do problems remain about using these Acts? If so please provide detail.

- COPFS has prosecuted perpetrators of child sexual abuse under both the 2005 and the 2009 Acts.
- Table 1 below shows the number of charges prosecuted and convicted under the 2009 Act involving younger and older children. The 2009 Act came into force on 1 December 2010, therefore the figures in the financial year 2010-11 only relate to the period from December 2010 to March 2011. The figures only relate to closed cases, there will be a number ongoing particularly in the 2012/2013 cases.
- Table 2 contains official figures obtained from the Scottish Government of convictions under the 2005 Act.3
- In considering these figures one must take into account that they are not the total figures of all prosecutions for sexual offences against children but only the figures relating to offences prosecuted under the 2005 and 2009 Acts.
- As mentioned above, there are many forms of child sexual exploitation that will be prosecuted under the common law or under other legislation.
- All child abuse has an element of child sexual exploitation although not all cases will have all the elements contained in the definition by the Scottish Executive in

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3 Figures from Scottish Government
2003. When considering the appropriate charges to prosecute, prosecutors will consider all the elements of the crime and which elements of a crime can be proved, at present by corroborated evidence. For example a common aspect of gaining a younger child’s trust may involve the giving of additional “pocket money” or sweets and having carried out the sexual abuse the perpetrator may have handed out money or sweets to the abused child. The most appropriate charge will be related to the act that the perpetrator carried out i.e. rape, sexual penetration or sexual assault but the giving of the money or sweets would form part of the narrative.

- Statistics on sexual offences including child sexual exploitation are complex and ought to be analysed with care. Misinterpretation and sensationalism can discourage victims from coming forward.

Table 1: Sexual Offences (Scotland) Act 2009: Outcome of charges reported to the Crown Office and Procurator Fiscal Service with an initial decision taken to prosecute.5

<table>
<thead>
<tr>
<th>Year reported</th>
<th>Age of victim</th>
<th>Conviction</th>
<th>No Conviction</th>
<th>No Further Action</th>
<th>Total number of charges</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>13 to 15</td>
<td>30</td>
<td>39</td>
<td>13</td>
<td>82</td>
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<td>Under 13</td>
<td>23</td>
<td>16</td>
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</tr>
<tr>
<td></td>
<td>Total</td>
<td>53</td>
<td>55</td>
<td>17</td>
<td>125</td>
</tr>
<tr>
<td>2011-12</td>
<td>13 to 15</td>
<td>130</td>
<td>97</td>
<td>54</td>
<td>281</td>
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</tr>
<tr>
<td></td>
<td>Total</td>
<td>192</td>
<td>130</td>
<td>71</td>
<td>393</td>
</tr>
<tr>
<td>2012-13</td>
<td>13 to 15</td>
<td>76</td>
<td>40</td>
<td>23</td>
<td>139</td>
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<td>Under 13</td>
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<td></td>
<td>Total</td>
<td>105</td>
<td>54</td>
<td>28</td>
<td>187</td>
</tr>
<tr>
<td>Grand Total</td>
<td></td>
<td>350</td>
<td>239</td>
<td>116</td>
<td>705</td>
</tr>
</tbody>
</table>

4 Any involvement of a child or young person below 18 in sexual activity for which renumeration of cash or in any kind is given to the young person or a third person or persons. The perpetrator will have power over the child by virtue of one or more of the following – age, emotional maturity, physical strength, intellect and economic and other resources e.g. access to drugs”

5 Table includes information on all charges which have been fully dealt with and closed on the COPFS data base (as at 11 June 2013)
Table 2: People convicted in Scottish Courts for offences under Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

<table>
<thead>
<tr>
<th></th>
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<tr>
<td>All</td>
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<td>2</td>
<td>0</td>
<td>6</td>
<td>4</td>
<td>4</td>
<td>7</td>
</tr>
</tbody>
</table>

Where this was the main charge they were convicted of