



**The Lord President's Private Office**  
Parliament House Edinburgh EH1 1RQ

9 November 2016

Peter McGrath  
Clerk to the Justice Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Peter

#### **INQUIRY INTO THE ROLE AND PURPOSE OF COPFS**

I refer to your email of 2 November asking whether the Lord President, or another member of the senior judiciary, would wish to make an informal contribution to the Inquiry, by meeting with the Convener and members of the Justice Committee. I have discussed matters with the Lord President and he has asked me to reply to you.

The Lord President is of the view that it would not be constitutionally appropriate for him to have an informal meeting with the Convener and Committee members, in matters relating to COPFS, for much the same reasons that the Lord President cannot have private briefing sessions with MSPs. Any such meeting would require to be a public one, for reasons of transparency, and because any comments or criticisms of COPFS should be made in a forum which allows COPFS to respond properly where that is considered to be advisable.

Having reviewed the remit of the Inquiry, and in particular the questions upon which the Committee seeks views, the Lord President is of the view that he cannot make any contribution which would be of assistance to the Committee beyond the written submission by SCTS.

Dealing with the questions in turn, the Lord President notes as follows:

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**Question 1** It is difficult for the Lord President to comment on the overall efficiency and effectiveness of COPFS as, sitting as a judge, he sees only a part of the work of COPFS; in effect the end product of the Crown's work. Inevitably that is a very limited perspective. It would be inappropriate to draw conclusions based on subjective experience of a small pool of cases and, therefore, a narrow view of these matters.

**Question 2** The question of how well COPFS works with other stakeholders has been comprehensively addressed in the written submission for SCTS.

**Question 3** The Lord President is not in a position to comment on what resources and skill-sets COPFS needs to carry out its role effectively. Similarly, there is no basis upon which members of the judiciary could offer views on the further questions in paragraph 3, in relation to 'future-proofing', or in relation to what additional capacity COPFS may need.

**Question 4** The Lord President sees the issue of COPFS' response to the needs of victims of crimes and witnesses as a matter primarily for victim support groups and others who are better placed to offer accurate views. Again, members of the judiciary deal with victims, and witnesses, in the relatively narrow forum of a trial. Given their subjective experience of a limited pool of cases they are not well placed to offer views on the wider experiences of either group.

**Question 5** The Lord President cannot comment on the issues set out under this head.

You will appreciate from the foregoing that, for the same reasons, the Lord President does not consider it to be constitutionally appropriate for a serving judge or sheriff to meet with members of the Committee informally. He does not consider that individual judges or sheriffs are in a position to comment on the various issues, given that such comments would be based either on anecdote or an incomplete understanding of the facts. He considers that similar difficulties apply in respect of any retired judge or sheriff who has chosen to remain available for re-employment in terms of section 22 of the Law Reform (Miscellaneous Provisions) Scotland Act 1985, or section 12 of the Courts Reform (Scotland) Act 2014. If a retired judge, in the sense of one not planning to sit again, wishes to offer the Committee his or her views, that is a matter entirely for him or her.

I am sorry that, in the circumstances, I cannot be more helpful.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. Flinn', with a stylized flourish underneath.

**Roddy Flinn**  
Legal Secretary to the Lord President