Justice Committee

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

Written submission from the Association of Scottish Police Superintendents

Question 1

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

A close working relationship between our members and COPFS is of crucial importance to the delivery of an efficient and effective Justice System. This includes many other stakeholders from the private, public and third sector all of whom influence the delivery of justice.

It is recognised that economic pressures are adversely affecting COPFS and many of their partners, including Police Scotland. The challenging climate has undoubtedly led to a more collaborative approach towards justice as stakeholders are working closely to look at innovative methods of delivering an effective Justice System with reduced resources.

There is no doubt that service delivery can be improved and much work is already ongoing overseen by the multi-agency Justice Board of which Police Scotland is represented. Some of the ongoing work at present includes:

- Reviewing the submission and storage of electronic data to a secure ‘cloud based’ style which would allow for quick transfer of material, safe storage, digital material in the appropriate format for viewing, easier access for defence agents. A ‘Digital Evidence Vault’ is most welcome given the significant increase in cases where there is a digital footprint.

- Better use of the Police Witness Scheduler should lead to a reduction in citing officers for court during days off and/or annual leave, sometimes leading to trials being deferred or officers time off or leave being disturbed all of which impacts not only on the officer’s wellbeing but also that of their families. At present this is restricted to summary cases with consideration of expanding to Solemn procedures.

- Ongoing work to have witness necessity assessments carried out to reduce the number of people cited to provide evidence where they are not required due to other evidence testimony or their evidence is deemed unnecessary for the prosecution case.
The Association recognises and supports the fact that COPFS has absolute jurisdiction for the prosecution of cases in an independent manner albeit there are more pre-submission discussions between COPFS and Police Scotland, particularly with Solemn cases, complex cases and those reported via the Serious Organised Crime Division at Crown Office where a more ‘collaborative’ approach is taken during prosecutions.

It should also be noted that much progress has taken place in relation to reducing the bureaucracy involved with reporting crimes and offences to COPFS. The introduction of Formal Police Warnings, National Abbreviated Report Templates, Enhanced Report Writing pilot across 4 divisions of Police Scotland – police reports being submitted directly to COPFS without going through a Report Checking Unit.

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

We are confident that COPFS is actively engaged with partners across all sectors and stakeholders. This is particularly evident at senior level such as via the Crown Policy Division & Strategy and Development Department (SDD) however there is also positive feedback around the reintroduction of ‘Area style Fiscals’ with responsibility for local courts who work closely with Divisional Command teams to improve service delivery.

COPFS plays a key role in tackling Terrorism and Serious Organised Crime through active participation with groups such as the Serious Organised Crime Task Force.

The multi-agency Justice Board is a good example of collaborative working to improve services in a complementary manner. The board enables change to take place more efficiently while being sighted on the consequence impact on partners.

The Justice Board provides governance for the delivery of change and services, including those highlighted at question 1.

The shape of crime is evolving with an increased focus on crimes such as sexual crime, cyber, cyber enabled, Domestic Abuse etc many of which are often complex and challenging cases. COPFS has met this challenge through creating several ‘specialist prosecutors’ who provide advice, guidance and counsel to Police Scotland and other Law Enforcement Agencies, pre and post arrest thus providing a more collaborative and joined up approach to the prosecution of crime.

Question 3
Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its role effectively: and is appropriately “future proofed” – for instance to deal with new technologies available to criminals, changes in the overall profile of crime in 21st century Scotland, or withdrawal from the European Union? If not, what additional capacities does the COPFS need?
The Association is not minded to pass comment regarding individual organisation’s capacity and capability to deal with ever changing crime trends. What we can comment on is the fact that the investigation and prosecution of crime and offenders is becoming more complex and challenging as criminals exploit the internet to cross international boundaries to further their criminal activities.

Cyber and cyber-enabled crime has increased exponentially albeit much of this is not reported to Law Enforcement Agencies. The Office for National Statistics (ONS) reported in 2016 assessed there to have been circa 5.8 Million online offences including fraud and computer misuse offences in England and Wales.

Emergence of the ‘Dark Web’, encryption and Proxy Servers all serve to frustrate Law Enforcement Agency investigations. This is a common challenge across all areas of Justice and will require significant investment, training and collaborative work to ensure we are ‘fit for purpose’ to deal efficiently and effectively with such crimes.

Many low-level crimes are now committed by mobile phone, tablet and computers, across social media and messaging facilities. This presents a further challenge to investigations and prosecutions as securing evidence is more complex, protracted and costly thus slowing down the course of justice.

It is encouraging that there is ongoing work under the Digital Justice Strategy to explore new, innovative and efficient methods of gathering, transferring, storing and viewing digital evidence in the future. Moreover, this is a collaborative approach as all agencies need to improve their ability to meet the challenges of modern and future crime trends.

It is difficult to comment upon the potential impact of Brexit, particularly our exit from the European Union, Europol and other partner agencies across the EU. This is still unknown territory as the Scottish Government continues to assess the potential impact on crime investigation and prosecution across Scotland.

What we can say is that we have significant concerns around any exit from the European Union as this will undoubtedly decrease our capability to deal with cross border policing investigations such as the use of European Arrest Warrants and sharing of intelligence in a timeous manner.

**Question 4**

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

The Association is of a mind that victim support groups are better placed to provide meaningful and accurate evidence on this subject.

We are aware of and supportive of Section 4 of the Victims and Witnesses (Scotland) Act 2014, enabling victims to request a review of COPFS decisions not to prosecute. Previously, victims often believed that the decision not to prosecute was a
decision made by the police however the Act allows for greater transparency and accountability to victims as to why a prosecution did not take place

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

We are aware of the Inspectorate of Prosecution in Scotland (IPS). IPS carries out a role similar to Her Majesty’s Inspectorate of Constabulary in Scotland. I have not had any active involvement with it.

Gordon Crossan
Chief Superintendent
President, Association of Scottish Police Superintendents.
10 November 2016