Justice Committee

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

Supplementary written submission from the Crown Office and Procurator Fiscal Service

Thank you once again for the opportunity to give evidence to the Inquiry and for the work that the Committee has done in eliciting a wide range of evidence. I also respond on behalf of the Lord Advocate in relation to questions directed to him.

I undertook to revert to the Committee in respect of a number of matters raised at the evidence session.

Responding to Ministerial Correspondence

The Committee asked for details of the average time and the longest time for COPFS to respond to letters from MSPs.

Per Scottish Government Guidance we aim to reply to all Ministerial correspondence within 20 working days. Where we are not able to respond to Ministerial correspondence within 20 days, a holding reply is issued and an indication is given of when a final reply is likely to be available.

For Ministerial correspondence received by COPFS between January 2016 and October 2016, the average time taken to respond was 19.2 days (this average includes public holidays and includes one response that took 91 days). The quickest response was sent within five days and the longest response time was 91 days. The response that took 91 days was exceptional and required a significant degree of consideration.

NICP Work in Progress

The Committee was interested in the number of summary cases yet to be marked, and how that compares to previous years.
COPFS has a published target of marking 75% of cases within four weeks of receipt. This is a year-end target which is assessed at the end of March each year. I am pleased to confirm that we are currently achieving the 75% target in the financial year to date and expect to meet it for the year as a whole.

As of 22nd January 2017, the NICP workload was 16,013. This volume of casework has varied throughout the year over the last five years between approximately 6,700 and 17,200. The current figure is the equivalent of just over four weeks of reporting from the police and all other reporting agencies which is consistent with us being able to achieve our aim of taking decisions in 75% of cases within four weeks.

There are many factors which influence this work in progress figure. One of the principal variables is the volume of cases reported in any given week, which averages at the moment at 3,800 cases per week but can vary from one week to
another within a range of 2,000 cases. You will understand that when the variation in input is this great, a necessary consequence is the equivalent variation in COPFS volume of unmarked cases. Another variable is the available legal resource to deal with the cases submitted. Characteristically, our unmarked work in progress will be higher in the weeks following peak leave periods such as the recent Festive period.

Within this body of casework, NICP prioritises custody cases on a daily basis and then cases in which an accused has given the police an undertaking to attend court on a specific date. These are invariably the most serious cases which NICP will deal with and thereafter, a large proportion of the remaining casework involves direct measures and less serious cases for court for which the accused has not yet been given a date to appear. This part of the casework is then carefully managed by NICP to ensure that appropriate timebars are met.

In some cases, NICP cannot take a decision when the report is received because of a lack of information in the report. A proportion of the casework also involves, therefore, cases in which the reporting agency has been asked to provide additional information or carry out further enquiries.

**NICP meetings with unions**

The Committee indicated that it had information to suggest that there had been several meetings between NICP managers and the FDA and that people left those meetings discontented.

I understand there has been one meeting, in December 2016, involving NICP management and the FDA union. Having checked with those involved, I am pleased to confirm that the impression of those attending on behalf of both NICP and the FDA was that the meeting opened up a constructive dialogue. Following this meeting, it was agreed that further such meetings would be beneficial to air any other issues that may arise in the future. The FDA have confirmed to me that they welcomed the opportunity to meet with NICP and will be following with interest commitments made by NICP to look further at some of the matters raised. I can reassure the Committee that NICP managers, like other managers in COPFS, welcome dialogue with the Unions.

**Domestic Abuse Figures**

The Committee asked for information about sentencing outcomes for the 80% of domestic abuse cases in which a conviction is obtained.

In 2015-16, 12,374 people were convicted of an offence with a domestic abuse aggravator, a drop of 66 from 12,440 the previous year. 3,140 were not convicted.

The proportion of those convicted who receive a custodial sentence has increased from 10% to 14% over the last 10 years. This is similar to the sentencing outcomes for all convictions (domestic abuse and non-domestic abuse) in which 14% receive a custodial sentence. The average length of custodial sentence for domestic abuse convictions was 243 days, up from 140 days in 2006-07. The proportion of those convicted of a domestic abuse offence who receive a community sentence has
increased from 19% to 29% over the last 10 years. The figure is lower for all convictions (19%).

By contrast, the proportion of those convicted receiving a financial penalty for a domestic abuse offence has decreased from 40% to 23% over the last 10 years. The figure is higher for all convictions (50%).

A relatively high proportion of those convicted (around one third) are admonished, and this has remained relatively constant over the last 10 years. The admonishment figure for all convictions is 17%, many of which follow a period of deferred sentence.

I also indicated when I gave evidence that I would provide details about the number of convictions with a domestic abuse aggravator since 2010-11, which are as follows:

- 2011-12: 8,877
- 2012-13: 9,292
- 2013-14: 11,077
- 2014-15: 12,440
- 2015-16: 12,374

**Damages/Compensation paid by COPFS to victims or witnesses**

The Committee asked for information on how many times COPFS has paid damages or compensation to victims or witnesses as a result of their being detained due to errors by COPFS. The current system for recording this information has been in place since 2014, therefore I can only provide information from 2014 onwards.

When COPFS is made aware that a person (accused or witness) may have been unlawfully detained, we will review the circumstances of the case. If it appears that we have erred in a manner leading to the unlawful detention of an accused person or witness, even if we consider that we would be able to successfully defend any civil claim, consideration is given to whether it is appropriate for COPFS to offer that person an *ex gratia* payment in respect of any inconvenience caused.

Since 2014, 22 cases have been identified where we have made *ex gratia* payments in relation to claims of unlawful detention Between 10th January 2014 and 10th January 2017, COPFS has paid out a total of £12,667.80.

**Freedom of Information requests**

There was some discussion during the evidence session about the Freedom of Information (Scotland) Act 2002 (“the Act”) and the provision in section 48(c) which excludes an application to the Scottish Information Commissioner for a review in respect of information which is held by the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Contrary to the question which was put to the Lord Advocate by the Committee, the provision is not a restriction on openness or transparency. This provision was carefully considered by the Scottish Parliament when it legislated in its first session in relation to freedom of information and careful note was taken at that time of the
Lord Advocate’s constitutional position. It recognises that, in light of the statutory requirement on the Lord Advocate in terms of section 48 of the Scotland Act 1998 to take decisions as head of the systems of criminal prosecution and investigation of deaths in Scotland “independently of any other person” that it would not have been competent for the Freedom of Information (Scotland) Act 2002 to provide the Commissioner with powers to require disclosure of information held by the Lord Advocate – decisions as to the disclosure of information held by the Lord Advocate, as head of the systems of criminal prosecution and investigation of deaths in Scotland, can only be taken by the Lord Advocate.

Beyond the question of competence, the provision also strikes a balance between the entirely appropriate application of freedom of information to COPFS and the need to uphold the confidentiality of information provided in the context of a criminal justice system in which the criminal courts are the sole forum to determine guilt. Providing the Commissioner with the power to order the disclosure of information in such cases risks deterring victims and witnesses from providing information to law enforcement agencies if there is a possibility that such information could be disclosed other than in the normal court process.

In 2016, COPFS received 27 requests for review in relation to freedom of information and overturned the refusal to release information in two of those cases.

**Enquiry Point**

I promised to provide statistics on the proportion of people who, once they get through to Enquiry Point, have their issue addressed by the Enquiry Point operator.

I can confirm that, between September and December 2016, the total number of calls received by Enquiry Point was 124,085. The average percentage of calls dealt with by Enquiry Point was 86.27%. The average percentage of calls transferred to a Procurator Fiscal’s Office to resolve was 13.73%.

**Direct Measures**

The Committee asked for information about the numbers of fiscal fines and road traffic fixed penalties offered.

The Statistical Bulletin, published on 17th January 2017, advises that the number of people issued with a fiscal fine in 2015-16 reduced by 5% from the previous year (34,389 people, down from 36,191). The number of road traffic fixed penalties issued by COPFS reduced by 31% from the previous year (10,740 down from 15,480). This reduction represents lower numbers of road traffic offences now reported by Police Scotland.

The number of compensation orders fell by 15% (from 595 to 505) and now stands at around quarter of the number issued in 2008-09. By contrast, the number of combined fiscal fine and compensation orders rose by 35% (from 1,980 to 2,669), the highest level recorded.
Conclusion

Once again, I wish to record my appreciation to the Committee for the keen interest which it has shown in our work. The Committee’s inquiry, and the evidence which it has heard, have provided us with an opportunity to reflect on our current plans, to build on the good work which has been done before, and to take on board the comments and views of those with whom we work and those we serve.

David Harvie
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24 January 2017