Justice Committee

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

Written submission from the Church of Scotland Legal Questions Committee

This submission is being made on behalf of the Legal Questions Committee of the Church of Scotland. The Committee is responsible for monitoring the interface between the law of the Church and the law of Scotland and advises the Church accordingly. Of particular relevance to this submission, the Committee keeps a watching brief on disciplinary proceedings, which are undertaken internally in accordance with the Church’s own discipline legislation. However, certain Church cases involve respondents who are also the subject of criminal proceedings. In such instances the Church is a keen-eyed observer and has both professional and pastoral concern for the individuals involved.

While the number of such cases, involving Church personnel, is relatively small, they nevertheless provide a useful snapshot of the criminal justice system. The Legal Questions Committee has no reason to believe that its own office-bearers are being treated any differently than others who are involved in criminal proceedings. This submission therefore reflects the Church’s wider pastoral concern for all who are involved in criminal cases. This concern extends to those who are accused, to victims and to witnesses and also to other people who are closely connected with them.

The Committee’s principal concern relates to the protracted timescale of many cases. In this regard specific comments are offered in relation to Questions 1 and 2 of the consultation.

Question 1:

In a recent criminal case, a period of 23 months elapsed between the accused initially being charged by the Police and the case eventually being concluded in court. This was exacerbated by a series of errors which were made by the Procurator Fiscal when preparing the notice of indictment. As a consequence, 18 months after the accused had initially been charged, the Sheriff ordered that the case be deserted ‘pro loco et tempore’, but allowed the time-bar to be moved forwards. The Procurator Fiscal subsequently referred the case to the Crown Office, seeking a view as to whether or not a new indictment should be served. The matter was eventually brought back to court, but dismissed when a principal witness admitted to having made false accusations.

The above is an example of a case in which a series of delays had a devastating effect on the accused. A number of factors contributed to these delays, including the scheduling of hearings, errors made by the Procurator Fiscal and rulings made by the Sheriff. We suggest that there is a need for better case management and for greater accountability when errors are made. It may help for an independent overview to be maintained of individual cases, to enable issues such as delays to be highlighted and addressed, especially if the cumulative effect becomes unreasonable.
and risks being detrimental to the people involved. This may enable certain matters to be prioritised if it is perceived that delays are becoming excessive.

The above case also raised questions about communications with COPFS, since there were extended periods during which the accused did not know whether matters were being taken forwards. It would be more helpful for an enquirer to receive a simple response, to the effect that ‘matters are still under consideration’, than to receive no response. Clear lines of communication need to be in place.

Question 2:

In addressing the issue of protracted timescales, we believe that greater account needs to be taken of the wider picture involving other stakeholders in the criminal justice system. While the matter of police investigation is not a part of this present consultation, in our experience the activities of the Crown Office and Procurator Fiscal Service and police need to be considered together, to understand how cumulative delays can affect both individuals and others connected to them such as employers.

In our experience, some police investigations proceed very slowly. We appreciate that this is probably a result of lack of police time and the resulting need for prioritisation. However, we have observed that when allegations such as financial misconduct which appear to be seen by the police as being “less serious” than those involving physical harm are being investigated, more than a year can elapse before any decision is taken whether or not to bring criminal charges.

The mere fact that a police investigation is known to be happening can have a significant impact on the life of the individual concerned. In many contexts it results in an individual being suspended from work for the entire duration of a police investigation and of any subsequent criminal case. In some scenarios such individuals may therefore experience stress and uncertainty for a period that is measured in years, rather than in months, before any determination of innocence or guilt. This inevitably has a wider impact on the community in which an individual lives and works, and includes both personal and financial costs to that community. It has, for example, a very significant financial impact on an employer to have a worker suspended for a protracted period.

George S. Cowie
Convener of the Legal Questions Committee
18 October 2016