

## Justice Committee

### Scottish Government's Draft Budget 2018-19

#### Written submission from the Procurators Fiscal Society Section of the FDA

##### About us

1. FDA is the trade union which represents senior managers and professionals in the public sector, in particular the civil service. We represent the biggest group of lawyers within the Law Societies of Scotland, Northern Ireland and England and Wales. This includes the prosecutors in each of these jurisdictions.
2. As a public sector union, we work to improve members' terms and conditions, workplaces, skills and working lives.
3. We are affiliated to the TUC and STUC, but are strictly politically neutral and have no formal links with any political party.
4. The Procurators Fiscal Society is a section of the FDA and represents mainly legal staff, including many of the most senior lawyers, within the Crown Office and Procurator Fiscal Service (COPFS). The vast majority of prosecutors in COPFS are members of FDA.

##### The Draft Budget for COPFS 2018/19

5. The Committee will be aware that the budget for COPFS in the current year is £111m (down by 3.5% on the previous year). However, by way of illustrating the level of cuts that have already been absorbed by the department over recent years, the budget in 2009-10 was £118.3m. If our budget had kept pace with inflation, by 2016 this would have amounted to £145.6m<sup>1</sup> - a difference of almost £35m. Even if COPFS budget remains the same in 2018/19, this will still amount to a **real terms cut in our budget of 23.8%**.
6. We have seen the interim evidence (in advance of publication of the Scottish Government draft budget) submitted by the Crown Agent and Chief Executive of COPFS, David Harvie, and note the helpful update regarding the various measures being implemented in order to improve the service to the public.
7. We make only one observation about the use of tablets in court (Case Management in Court – CMIC); which is that although it is desirable to harness and best utilise technology where possible, any potential cost savings from this project are unlikely to be realised in the near future. In addition, it is not currently thought that the use of this type of technology will significantly impact on the amount of time required for prosecutors to prepare and run their courts.
8. The Committee will see that the Crown Agent confirmed the COPFS finance and workforce planning strategies (published in January 2017) made a number of

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<sup>1</sup> Bank of England inflation calculator

assumptions to allow for forward planning in terms of staff resource. The strategy predicted job losses over the next 5 years of between 150-200 staff, but this was based on certain assumptions in relation to budget, inflation and pay policy (see paragraph 4 of COPFS submission). FDA's concern is that we anticipate a change in most, if not all, of these factors and therefore that the predicted job cuts will prove to be a conservative estimate.

9. The Committee may recall that in previous discussions we have stated FDA's position to be that whilst we do not consider it appropriate for a trade union to dictate the details of any government's budget, we will always argue that the resources available have to match the service provision demanded of that organisation. It follows therefore that either COPFS requires to be adequately resourced or alternatively, political decisions are required of those in government to appropriately review the commitment required from the service and make choices about what they want the prosecution service of Scotland to deliver.
10. FDA's view is that current resources are insufficient for the additional demands placed on and increased workload of the service. It is time either for the commitment to match the resources or for those difficult decisions to be made about what aspects of the service and work that we currently undertake will we stop doing.
11. The Committee will be aware from the submissions of SCTS (paragraph 7) and COPFS (paragraph 20) that there has been a very significant increase in serious sexual offence cases being dealt with by COPFS. It now constitutes around 75% of the workload in the High Court – compared against 50% only 2 years ago. In just the last year there has also been a rise of over 50% and this trend is expected to continue for some time to come.
12. The Committee will also be familiar with the recently published thematic report by the Inspectorate of Prosecution on the investigation and prosecution of sexual crimes <http://www.gov.scot/Publications/2017/11/3053> and we would particularly align ourselves with the first three paragraphs of the Inspectorate's submission on the draft budget. In particular, "...there are many dedicated professionals in COPFS seeking to achieve the best outcome for each case challenged by unprecedented numbers of serious sexual crimes, in a climate of budgetary restraint and an increasingly complex criminal justice system."
13. The increase in sexual offences cases involves complex investigation of such crimes and the various lines of inquiry that require to be undertaken in every case. These are intensive cases which carry significant welfare risks to members involved in this work, well recognised by COPFS with vicarious trauma support provided.
14. The Inspectorate also refers to the Audit Scotland report which identifies the increase in complexity of cases, with greater focus on historical sexual offences and domestic abuse as a source of pressure. The continuing upward trend of such crimes will undoubtedly impact on COPFS resources.

15. In terms of our staffing resource (paragraph 7 of the COPFS submission), FDA has welcomed the recent recruitment of permanent prosecutors and the move from temporary to permanently filling promoted vacancies. However, even after the recent recruitment exercise, there is still a reduction of almost 6% in the full-time equivalent number of prosecutors from our highest recorded number of prosecutors in 2009 (558 FTE prosecutors).
16. In relation to forthcoming legislative changes, the Criminal Justice (Scotland) Act 2016 introduces a broad range of changes to policing which will directly impact on the work of COPFS, introducing additional work and processes that prosecutors do not currently undertake. For example, prosecutors will require to consider applications for post charge questioning and deal with challenges to the processes carried out by the police, particular in relation to arrest and interview. There are also new formalised processes for challenging evidence which the defence might seek to rely on. One big change, the impact of which has not yet been assessed, is the introduction of police investigative liberation which has a right of review. Such reviews must be dealt with by a prosecutor. These new provisions, which come into effect on 25 January 2018, will accordingly have a direct impact on the resources within COPFS. It cannot simply be that on every occasion we are required to absorb the extra demands and implement change on a 'cost neutral' basis.
17. The professionalism and dedication of Procurators Fiscal to the public interest remains firm, but their task is increasingly difficult against this background. We believe that there is a risk that current conditions may place the health and welfare of prosecutors in jeopardy and that this presents a risk to the effective delivery of justice.
18. We cannot see how COPFS can continue to deliver current or improved standards of service with the reduced staffing levels that will be required under the predicted real terms budget cuts that a "flat cash" settlement would represent. We fear that, not only will our members bear the consequences of these increased pressures, but there will inevitably be an impact on the wider justice system and the service provided to the public.
19. In our preparation for this submission we wrote to our members seeking their views and experiences at the 'coalface'. We asked for their comments on what they would like to say to the Committee and these are attached at **Annex A**.
20. The Committee will see in these comments an overwhelming sense of significant pressure against rising workload in High Court business, members working additional, unpaid hours on a regular basis out of a sense of dedication, professionalism and commitment. There was a strength of feeling that our members are bearing workloads which are such that they are increasingly unable to deliver an effective service and fearful of mistakes being made, and that the impact will be on the broader quality of work and a sense of concern that we are letting victims and witnesses down.
21. In conclusion, we wish to be clear that our evidence should not be seen as an attack on those who manage COPFS. We know that our senior managers are

working hard to find solutions to the challenges for COPFS from within existing resources. However, we believe they have been set an unrealistic task. The decision about adequate resourcing and setting the demands and priorities for the organisation is a political one.

22. We hope this information will be of benefit to the Committee and would of course be happy to assist further in future.

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FDA Procurators Fiscal Society Section Secretary

12 December 2017

## FDA survey of members regarding evidence to be submitted to Justice Committee

### Themes and issues

- An overwhelming sense of significant pressure against rising workload in High Court business, reporting working additional, unpaid hours on a regular basis out of a sense of dedication, professionalism and commitment. Time spent on out of hours, unpaid preparation was a recurring theme.
- The impact this additional work and preparation time was cited by at least one respondent as having a detrimental impact on family relationships.
- There was a strength of feeling that our members are bearing workloads which are such that they are increasingly unable to deliver an effective service, leading to mistakes being made, impacting on the broader quality of work and a sense of and a concern that we are letting victims and witnesses down.
- Pay featured prominently, with a sense of members feeling undervalued.

### Some illustrative quotations

“Adequate preparation time for trials is a rarity and so, taking papers home is essential because I not only take pride in the work that I do but I am acutely aware that there are high expectations from the public regarding the office that I hold.”

One manager respondent reported feeling “stressed to death”.

“Employees are being effectively forced to deal with workloads in which it is nearly impossible to deliver an effective service given the time constraint to properly consider the relevant legal issues.”

“If the Committee considers adherence to the rule of law is an important principle within society then steps should be taken to ensure that criminal justice sector is adequately funded and resourced.”

“I regularly take work home with me in order to review case papers, and prepare for trials. This is now the norm rather than the exception. Adequate preparation time for trials is a rarity and so, taking papers home is essential because I not only take pride in the work that I do but I am acutely aware that there are high expectations from the public regarding the office that I hold. I suspect that if the public were to know the whole truth about how understaffed, demoralised, and overworked and underfunded COPFS actually is, there would be outcry.” This particular member of staff also reported the impact that dealing with a large and high profile case had taken on their personal relationship: “Due to the volume of work that was required on this case and the duty that I felt to carry out this work, I was regularly taking work home every

evening and weekend, getting up early and going to bed late.” Their partner reported feeling like they had “lost” the member to the job.

This member reported that over the last year “...the quality of case preparation continues to decline: bare minimum is the norm now whereas it used to be exceptional. The case preparers are dedicated and work hard but often do not have the necessary knowledge or experience and SLMs [Solemn Legal Managers] clearly provide almost no input. Non-legally qualified staff are left to draft complicated charges in historical sexual abuse cases ... we are given the cases at the very last minute and are having to make considerable changes at very short notice.” The member reports that they are now taking less work home, but that is only because admin colleagues are unable to cope with anything other than the most urgent work (i.e. cases that are about to time bar) coming back in the morning or after the weekend. The member fears that it is not if, but when something will go wrong and a time bar will be missed. The member goes on to say it is surely time to say that enough is enough and say that funding of the service is completely inadequate.

“We want to provide a world class service, but we simply have far too much work and not enough people. We have staff with no prep time for difficult and sensitive trials. We have staff in court day after day, working at home, coming in while on leave and constantly worrying about work.”

“Sickness absence places an impossible burden on those who are left because there are so few of us. We can't get leave when we want or for as long as we want. We are in this service because we care; we have dedicated our life to it because we believe it is an essential public service, vital in a mature democracy. We feel ground down and taken advantage of - we need more staff of all grades. I personally love my work but the strain is intolerable.”

“The courts are overloaded with inadequate time for preparation when deputies are in court virtually every day. Advance preparation trials (often stalking cases) are a fraud. We tell victims and the public these cases are given high priority when the reality is that they are allocated to a trials deputy who is not then allocated preparation time and just has to fit them in with the rest of the workload, I have stopped arranging any social engagements on working days as I don't know when I will get away from the office and whether I will have to take work home.”

“At various times over the past year requests for leave have been refused due to staffing shortages and at times it is notable that there are question marks on the rota as to who will cover a specific court. This effectively means that people don't necessarily know what their workload will be for that particular week and indeed a refusal of leave requested adversely impacts on morale where people are already working flat out and need the break. I have also had a request to attend a training course refused due to staff shortages which meant that I had to find other ways and indeed time to complete the required CPD [continuing professional development] for the past year. When you are in Court all of the time this can prove difficult and somewhat stressful knowing that you are struggling for time to complete CPD that is required for you to obtain your practising certificate. I regularly take work home at night as there is insufficient time within the working day to conduct a full court and

thereafter carry out whatever office duties require attention and then prepare for the next day's court."

"There has been a well-documented increase in the workload of the sexual offences team - it is quite overwhelming. I work additional (unpaid) hours on a very regular basis – not at request of senior management – but out of a (perhaps misplaced) sense of professional duty. I could mention about waking up in middle of night worrying, which I do. That however is not my particular complaint. I accept these difficulties as part of this stressful but serious and important role. However, I was reminded today of the inequity of our pay scales when compared to Scottish Government. There have been some recent departures from COPFS to Scottish Government of a number of employees – a sideways move which gives an automatic increase in salary. The Sexual Offences teams in particular losing staff at a time of increasing work load. In view of the nature of our work here-the complexity and the volume – it is demeaning to consider our efforts are valued so lowly."

"Much of the work that we do goes unnoticed, unrecorded, and unrewarded because it gets done out of hours, with full knowledge of management. Several times, senior management have been invited to instruct middle management to insist on staff recording work taken home, but they have not because it suits them not to - because then they don't have to pay for it and it conceals an open secret - lack of adequate resources. They say that staff numbers are at their highest for a few years, but I don't see them where I work."

"My workload and the related pressures have increased over the past year, with reductions in legal staff available to cover courts. I require to take work home regularly and work longer hours in the office, unable to take flexi time. Legal and administrative staff are finding it difficult to maintain the level of service to the public as they are constantly "firefighting". My colleagues and I have been unable to take annual leave because of difficulties having sufficient cover for court and other urgent duties. Training for legal staff has required to be cancelled on a number of occasions, because they are needed to cover courts. The lack of sufficient resources to cover court duties has added significantly to pressure and stress for managers and staff."

"I have seen the quality of work reduce in recent time due to the pressures on staff and squeeze on resources become ever tighter. Cases are still diligently prepared wherever possible but mistakes, often not minor, are made with more regularity and it's clear manager simply do not have the time to train staff and double check work as well as they need to. This is no criticism of managers or their teams but simply a sad and worrying fact as we struggle to cope with ever increasing demands on a shrinking work force. It's not sustainable in terms of staff welfare or quality of work."

"Our staff do an incredible job and they are very committed. However, we are dealing with extremely complex and sensitive matters, often with little preparation time or support. We sometimes struggle to have legal staff to cover all the court commitments and admin staff to complete all the basic preparation, let alone the more labour intensive work. I regularly work a 50 hour week, plus often work from home in the evenings or weekends. I very much appreciate that government is struggling but if any further budget could be allocated to allow us to have more staff it

would really help us to do the job to the best of our ability and serve the public properly. “

“There is insufficient staff to prepare the cases at all levels to the requisite standard without a cost on health and stress levels. Workload has increased over the last year and staffing levels in my unit have reduced. In addition to the workload, the complexity of cases and bureaucracy in case management has also increased. On a personal level I am depressed before I go on holiday as I know that when I return I will have to catch up on all of the work which has accumulated during my absence – which defeats the point of having a holiday. Members of my unit have been absent due to stress and fatigue because of work load.”

“I have seen no example of improvements in the last year. I feel demoralised with my salary. My salary has diminished since 2010 in real terms and with an increase in my pension contributions I am worse off than I was 6/7 years ago.”

“We have been subjected to a 20% reduction in pay in real terms over the past 9 years despite having increased productivity to cope with more work and less resources. That is shameful.”

This member refers to a number of staff who have recently secured transfers or promotions to other government departments and says “I can only assume that there shall be more losses to the service – highly effective and exceptional members of staff are abandoning ship as they do not perceive that their worth is recognised, and that they are receiving sufficient remuneration for their hard work. Goodwill is almost entirely eroded.”

## **Engagement**

- Overall engagement of approximately 6% of membership (although some members have since reported that they did not have time to participate due to pressure of work)
- Highest level of responses from Local Court function (63%), closely followed by High Court function (52%)
- Responses predominantly from PFD, SPFD and PPFDD grades (approximately 81%).