Justice Committee

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

Written submission from David Grier

The Justice Committee will be aware of previous independent reviews and reports, including the Carloway Review of 2007; the Review of the Law and Practice of Disclosure by Lord Coulsfield along with current information from the Crown Office web page under the heading Prosecution and Policy Guidance book of regulations. Wherein, Chapter 2.1, 2.2 and 2.20 are particularly relevant to the assessment of effectiveness and efficiency of COPFS, when dealing with the determination of matters that should or should not be pursued through the criminal justice system.

All of the well-grounded reviews set practical and very sensible recommendations and guidelines. The Committee may well consider that existing guidance is sufficient and if applied consistently I would find it hard to disagree with that conclusion.

The position however is that COPFS simply do not adhere to their own guidelines and best practice. This may well be the result of inadequate resources (both people and technology) and competency; however as a starting point in building a modern service capable of serving the public now and into the future, rules and guidelines should be observed.

Independence and review of reports from the Police that should be a foundation in the assessment process however, independently determining next steps is challenged through the more recent amalgamation of joint resources and closeness of both Police Scotland and COPFS, who, along with others, share a common office at the Scottish Crime Campus at Gartcosh.

This aspect is widely referred to by lawyers who have long experience as a fundamental ‘fault line’ in the system which should otherwise underpin independence and thereby this leads to inefficiency through misplaced deployment of resource rather than what should be a critical and objective independent review of the facts.

The recently reported Holman Fenwick Willan case embarrassingly notes that actions by Chief Constable of the Police Service of Scotland and the then Lord Advocate represented “an abuse of state power”.

Above all I would submit that it is direction, or lack of direction, provided by COPFS in cases where there should be independent professional assessment, before setting any course of action, which is the most concerning and damaging aspect leading to inefficiency, abuse of power and lack of accountability, which is erroneously dressed up as being in the interest of justice.

Previous press statements by COPFS note that ‘cost is not a consideration’ in actions where decisions are later found to be wrong in law or simply misguided.
Finally, within the terms of reference set out by the Committee there is reference to The Inspectorate of Prosecution in Scotland. I was unaware of such a position, role or function.

That said, from available information the core purpose is one of ‘independence’. The challenge for the committee would at least as an observation include the question of how independence could actually be achieved and preserved when the Inspectorate reports to the Lord Advocate, who in turn is responsible for COPFS.

The summary of my submission is therefore:
1. Early engagement, consultation and direction from independent experts should be a hard coded first step in the assessment of alleged financial crime, which is a specialist and complex matter.
2. Previously agreed ‘guidelines’ should be set enshrined in legislation and thereby simplifying the ‘rules’ and process in order to reduce costs, over-run of preliminary hearings and preparation for trial.
3. The role of an ‘independent’ Inspectorate should by necessity include non-career COPFS staff and have a statutory reporting duty outside of COPFS.

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