Justice Committee

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

Written submission from Dr Bruce Henderson

As a full time forensic medical examiner engaged by several regions across Scotland I have the responsibility for the general healthcare of detainees in police custody and for the collection of forensic evidence. In addition I work as a medical officer in a Scottish prison. Through these roles I have regular contact with the criminal justice system.

Numbers Held in Custody

In other countries across the world courts may be open 7 days per week, some have evening sittings, some even have midnight sittings. In Scotland the courts close for 16 hours every weeknight, 64 hours every weekend, and up to 88 hours during public holidays. As a result, we have large numbers of cells that are fully occupied every weekend.

The courts also issue warrants which, without apparent consideration, are enacted at weekends and see people brought into custody with:

- jobs they may lose
- children who are passed on to relatives or social work
- dementia or even terminal illness
- disabilities requiring round the clock care.

Also, while I am wholly supportive of any possible measures to reduce domestic violence, I am not sure the compulsory detention of one, or often both parties in non-violent domestic disputes is necessary. Yet it is commonplace across Scotland.

Not strictly relevant to the COPFS, but indicative of the default use of police and custody resources where no other services are available, many of those detained are intoxicated and released without charge when sober. “Drunk tanks”, as used in other countries, would be a far safer and more suitable place for these people to be observed.

Citations

The single biggest threat to the delivery of forensic medical services is the burden of court citations on forensic physicians. While we all accept this is an essential part of our job, the impact on professional and personal commitments is largely responsible for our perennial recruitment and retention problems.

I receive between 5-20 citations per month to give evidence due to my professional involvement in criminal cases. I am frequently cited to appear in 2, or sometimes even 3 different courts at opposite ends of the country on the same date and at the same time. Even without the impossible challenge of being in several places at once,
I must make myself available to attend every single one.

Obviously, any doctor called to court must find another one to cover their duties while they are away. At best this is difficult, at worst impossible. As the service we provide is 24/7/365, attendance will often be instead of sleep and annual leave is taken when we can rather than when we may wish. Those of us who accept this stay in the job. Many choose not to.

After all the organisation and rearrangement to accommodate being available to attend, I actually give evidence in court only a handful of times a year. At short notice, the vast majority of cases are either adjourned or the trial does not proceed. This is disruptive to ongoing patient care, wasteful and frustrating.

My police colleagues endure similar frustrations and the amount of police time wasted by the inefficiency of the court is likely beyond measure. A simple solution may be enabling us to give evidence by video link.

Driving Offences

I accept that some time will inevitably pass before cases come to court but of particular concern is the apparently excessive delay in prosecution of driving offences.

A significant part of my workload is the assessment of people suspected of driving while impaired by a substance. I have had instances where I have seen the same person 2 or 3 times, with evidence of impairment each time, before the first offence has come to court. I am not aware of the reasons why it should take so long to prosecute a driving offence, but can't help feel the public are being put at risk unnecessarily by the absence of a fast track system.

Regional Variation

There is notable variation in practice between different regional COPFS offices. For example one region in Scotland insists on Fitness to Plead examinations being carried out on all detainees with mental health problems. This places a burden on local NHS resources yet is not required in any other region.

I was not aware of the existence of the IPS- perhaps they would wish to oversee variations in practice, both good and bad, and ensure greater consistency across the regions.

Prison

Large numbers of people are remanded to prison on a daily basis. They often attend court multiple times during the remand period. To avoid the expense of transporting prisoners could some of these appearances be facilitated by the use of video link? Could the court come to the prisoners?

There should also be consideration given to remanding people with significant healthcare problems. While each prison has its own healthcare service there are
limits to the levels of care we can provide within the prison regime. I have had elderly patients with dementia and full community care packages admitted to prison on a Friday evening without their medication or access to their medical notes. Would it be possible for the courts to contact us prior to remanding an ill or elderly patient to see if we have the facilities to look after them?

There are also prisoners given very short sentences- I have seen as low as 3 days. From a healthcare perspective, there is a lengthy admission process which has to be undertaken for every prisoner whether they are in for 3 days or 30 years. I remember one prisoner who received a 7 day sentence for non-payment of fines. He was accepting of the need for punishment as he hadn't been able to pay his fine. However, he had lost his job because of the 7 day sentence and, now less able to pay, expected a further sentence in due course.

Summary

Sadly, there are few positives to report in the way the COPFS integrates with its key partners. The system appears slow, inefficient and highly disruptive to the continuing provision of the professional services on which it relies- those of the NHS and the police. The end result of this failure to develop and innovate places a burden on citizens and taxpayers with unnecessary and often prolonged detention in both police and prison custody.

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