I welcome this Inquiry.

Before responding to the specific questions of the Committee, I do think it is necessary to highlight a very real concern that I, and many others, have in relation to the approach by COPFS in responding to requests for information made under the Freedom of Information (Scotland) Act 2002 (FOISA).

Under section 48(c) of the FOISA, where the information requested is held by the Lord Advocate as head of systems of criminal prosecution and investigation of deaths in Scotland, no application in respect of a review (appeal) can be made to the Scottish Information Commissioner. It has been my experience that this exemption is often being relied upon by COPFS to refuse to provide routine information about administrative and other matters which do not prejudice the integrity of prosecutions or threaten the safety of victims and witnesses. The Scottish Information Commissioner will seldom, if ever, seek to consider an application for review if this exemption is claimed regardless of whether it is appropriate or not. I believe the use of this exemption is something that the Committee should consider as transparency is vital if this Organisation is to be accountable to the Scottish people.

1. The efficiency and effectiveness of COPFS.

As an Organisation, COPFS appears to spend considerable amounts of public money constantly undertaking major reviews, moving staff all over the country, developing and subsequently dismantling units and management structures and employing Senior Civil Servants to undertake administrative roles.

In the past 15 years we have had a Sheriffdom structure, Area structure, Federation structure, Functional structure combined with the emergence of specialist divisions AND NOW Sheriffdom with Functional Structure and specialist divisions – totally undermining local justice and reducing the number of front-line lawyers available for court. This constant change is not indicative of an efficient or effective service.

The responses received to date show that there is constant churn within summary courts, solemn business is problematic with First Diets being repeatedly continued and the scheduling of High Court Trials is a nightmare which does nothing for victims and witnesses.

Defence agents cannot get into contact with depute fiscals and their correspondence is not being answered and telephone calls to costly numbers do not bring any satisfaction.

Procurement practices have been the subject of FOI requests. In recent years considerable public funds have been paid to Ricoh for supplying printers, scanners
and multi-function devices – together with consumables and software. A significant amount has been spent on developing a scanning solution but there does not appear to be any award notice or separate tendering exercise in relation to this costly piece of work which is separate from supplying machinery.

Attempts to develop a case management in court application have been ongoing for many years with no end in sight. Hundreds of iPads have been purchased and distributed throughout Scotland but there is no evidence of a proper procurement exercise having been carried out in regard to their purchase or the software being developed.

The Service claims to maintain a Full Electronic Record from which cases can be processed and accurate reports obtained. However, when information has been requested under FOI about the number of witnesses who have had access to their witness statements in advance of trial it is claimed that this information is not stored electronically and cannot be provided without unreasonable cost. It is relatively common knowledge that the information is recorded on individual witness contact records on the COPFS database as could be obtained quite easily.

2. Working with other stakeholders

COPFS tends to work well with police and SCTS. It is represented on a number of Working Groups but the actual value and what is delivered is not known. Making Justice Work and other initiatives despite considerable investment by COPFS has made very little difference to the experience of victims of crime.

3. Resources and Skillsets

COPFS has a considerable budget and there is, to my knowledge, no evidence of a lack of financial resources. Overtime is freely available to staff, casual staff are constantly being employed, new senior administrative posts are constantly being advertised and there seems to be no restriction in terms of IT expenditure. Staff throughout the country appear to be employed on projects that do not have realistic timescales, tangible outcomes or benefits and significant public funds are spent on specialist training accredited courses such as Portfolio Management, Programme Management, PRINCE2 Project Management and Work Measurement. None of this appears to bring any benefit to the Organisation.

There is a shortage of lawyers prosecuting summary and sheriff and jury business. However, this is because legal resources have been deployed to High Court business and the many other specialist units that have been developed – all managed by senior lawyers on significant salaries with no day to day involvement in court. Crown Office Policy Division consists of a great number of non-operational fiscals and, as far as I am aware, this includes communications and customer complaints.

4. Responding to the needs of Victims and Witnesses

The responses received to date from Victim Support Scotland (VSS) and other Support Organisations suggest that the service provided to victims and witnesses is
worsening despite the best intentions of the Scottish Government to put victims at
the centre of the criminal justice process.

I have already referred to the request for information about how many witnesses
have had access to their statements before trial. This is a fundamental right and a
clearly benefits and supports witnesses before trial. COPFS does not appear to be
routinely providing access and I wonder if that is why they are not providing figures.

VSS referred to the poor service provided to victims and witnesses following the
disbandment of the VIA National Team by COPFS management. This appears to
have left a disorganised group that does not follow instructions, are not accountable
and, apparently, unavailable. This cannot continue.

There is mention of a revised structure following a review of VIA. A FOI request to
see copies of the reports was refused. One can only wonder why.

The former Head of the VIA Service was suspended after expressing his concerns
internally about a proposal that he perceived would put victims at risk.

The service received by the families of the Glasgow Bin Lorry tragedy is
shameful. Following a BBC documentary the then Lord Advocate and Crown Agent
issued a Note to staff which disputed the version of events consistently given by the
families in the documentary. In the media the families have said they have been
branded liars.

A FOI request for copies of the notes given to families following the meetings in
accordance with Protocol was also refused.

In relation to providing support to enable witnesses to give their evidence by special
measures, I understand that default measures are being applied for without
individual vulnerability assessments thereby denying the individual the chance to
discuss or highlight concerns.

Recently revised and conjoined letters to vulnerable victims and witnesses are
appalling and simply done to avoid personal contact. No result is provided following
Intermediate Diet which, support groups will confirm, is when people are most
anxious.

5. The Inspectorate of Prosecution in Scotland

The Inspectorate is led by a former Area Procurator Fiscal appointed by the Lord
Advocate.

Margaret Sheridan
17 November 2016