About us

The 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.

As a trade union, we promote and protect our members' interests. We influence policy on their behalf, and provide networking opportunities and forums for considering matters of common interest. In relation to lawyers we also, where appropriate, represent their professional interests as well as their terms and conditions.

We defend the reputations of our members by acting as their voice in the media, with ministers and the HR profession - an important role as civil servants are usually not permitted to defend themselves publicly.

As a public sector union, we work to improve members' terms and conditions, workplaces, skills and working lives.

We are affiliated to the TUC and STUC, but are strictly politically neutral and have no formal links with any political party.

The Procurators Fiscal Society is a section of the FDA and represents the majority of the legal staff, including many of the most senior lawyers, within the Crown Office and Procurator Fiscal Service (COPFS). It began in 1930 as a professional association, and operated for over 60 years on that basis. In the early 1990s the Society became a section of the FDA. The Procurators Fiscal Society Section is represented on the Executive Committee of the FDA.

The Inquiry

The FDA welcomes the inquiry by the Justice Committee and the opportunity to highlight some of the good work done by Procurators Fiscal across Scotland against the continuing pressures being faced by our members.

The Committee has described its intention to explore whether COPFS has the right resources to meet the increasing workloads and demands of the Service. We have long argued that the resources provided to public service departments must match the service commitments required of them. In our view the continuing downward pressure on COPFS's budget is incompatible with these increased demands and maintaining the world-class Scottish prosecution service.
While we have welcomed COPFS plans for new initiatives and approaches to our work designed to enable COPFS to deliver despite that financial pressure, there is an ever increasing reliance on the good will of prosecutors which is not sustainable and risks decisions being made as to what work cannot be done.

**EFFECTIVENESS, EFFICIENCY AND RESOURCES**

The committee will be aware that the budget for COPFS in the current year is £113.45m. 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 £144.5m¹. Even if COPFS budget remains the same in 2017/18, this will still amount to a real terms cut in our budget of 21.5%.

This cut in the COPFS budget needs to be considered against a real-terms preservation of the budget for Police Scotland. That ring fencing of police resources has not been matched by similar protection of prosecution and court resources. This disparity is incongruous and risks inconsistent levels of service delivery across the criminal justice system and challenges the capacity of prosecutors and the courts to continue to deliver.

In terms of our staffing resource, FDA has welcomed the recent recruitment of permanent prosecutors, taking the full-time equivalent (FTE) to 515. That is still a drop however from the position in 2009 when we had 558 FTE prosecutors (a drop of 7.7%). These figures also are based on full-time equivalency and do not reflect the wide variety of working patterns. While FDA welcomes COPFS commitment to flexible working arrangements we recognise also the challenge this presents for COPFS in a court-facing Monday to Friday environment.

We are aware that the committee has received data from COPFS showing that the number of reports received from the police has been variable over the last few years. In 2015-16 over 235,000 were received, with a peak in 2013-14 of over 303,000. However, as outlined in our previous evidence to committee, we would submit that it is not possible to properly assess the workload for COPFS by looking at those figures in isolation. There are three main issues in these statistics which we would like the committee to consider.

1. The increase in the number of serious cases reported to COPFS.
2. The particular types of crime which make up this increase.
3. The nature and complexity of these cases which are more demanding, time consuming and resource intensive.

The committee will also know from the data provided by COPFS that although the number of cases reported has fallen in recent years, an increasing proportion of our cases are proceeding to trial. We suggest that to some extent this may be as a consequence of and a reflection of the type of cases. It follows that with an increase in trials there is also an impact on the number of staff required to deal with these increased cases in court.

¹ Bank of England inflation calculator
Of further significance is the continued increase in recent years of possible petition cases (i.e. solemn proceeding before a jury – either Sheriff Court or High Court) which are referred to as “pre petition cases”. These cases are predominantly sexual cases. Pre petition investigation is used in these cases for a number of reasons including to explore sufficiency of evidence to proceed and to investigate any credibility issues in the evidence. It is a crucial tool for prosecutors in ensuring the high quality investigation and preparation of cases. The investigations can be complex and, as such, the time given to carry out further work can be from 2 to 8 months. Anecdotally we know that a significant proportion of them involve historical allegations which are, of their very nature, more complex to investigate.

In 2013/14 there were 747 such pre petition cases and in the first 6 months of 2016/17 there have been 421 cases (which if replicated over the next 6 months, will result in an annual figure of over 840 cases – a rise of 12.7%). We expect that this increase will likely result in the redeployment of existing staff to undertake this work. The lack of additional resources to deal with these increases risks an adverse impact on the capacity of prosecutors to continue to deliver to the high standard rightly expected of them.

We also know that around 70% of the work dealt with in our High Court Unit now relates to sexual offending. These cases tend to be more time consuming because they involve medical and other sensitive records that need to be considered, and there are often complex issues involved relating to sufficiency of evidence.

In summary, legal and administrative resources are decreasing at the same time as the level and complexity of serious cases increases. It not only reduces the opportunity for prosecutors to invest in delivering even higher quality of service but puts at risk the high level of service delivered to date. This is creating a huge risk for the Criminal Justice System as a whole.

The committee will have seen that COPFS is continuing to meet targets even in this challenging environment. However, FDA is concerned that is being achieved at a high personal cost to our members.

As the committee may be aware, the sickness levels across the civil service show Average Working Days Lost (AWDL) is 7.2 days. ² Within COPFS this figure is 10.3. Of those on sick leave, over 27% of absences relate to mental ill health and of that, over 76% is recorded as being due to stress. It is acknowledged that not all of these stress absences will be directly work related, but we know anecdotally from our members (and from some of the data collected by COPFS HR) that a high proportion of those absences relate to work issues. The FDA is committed to protecting the health and well-being of our members and we are concerned that is at risk. The consequence of that risks the capacity of prosecutors to continue to deliver the high standard of service required of them.

Court Pressures

We know that there has been an increase in the numbers of cases which now conclude in Court, rather than by means of non-Court disposal. More significantly for our members there has been a substantial increase in the numbers of cases which are proceeding to trial. There is an obvious pressure therefore on our members in preparing for and running these cases.

There has been an 8.3% overall increase in trials in the last four years, and unlike the solemn cases referred to above, the pressure here is probably most greatly felt in the summary courts as that is where the volume of increase will be most acutely felt.

Other Factors in Relation to Workload

There are a range of additional aspects to our work which over the years has increased the workload of our members.

Creation of new offences

The creation of new offences such as stalking (section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 and serious and organised crime offences have led to the criminalisation of certain types of conduct and in turn increased the type and complexity of reports received by COPFS with the expectation that this would be absorbed by COPFS.

Legislative reform

Successive reforms to criminal justice, including provisions on double jeopardy and enhanced powers in cases involving vulnerable witnesses, while welcomed, all come at a cost, and yet all were implemented with the expectation that they would be absorbed by COPFS.

Most recently, the Victims and Witnesses (Scotland) Act 2014 and the new victims’ right to seek review of decisions not to prosecute was implemented with no additional resources. Although efforts were made to automate this process as far as possible to minimise the impact on workload for COPFS staff, and although we understand, anecdotally, that the right of review has been exercised in only a small proportion of cases, there is no doubt that the work of COPFS increased in the handling of these cases.

Legislative developments in, for example, the treatment of vulnerable witnesses and admissibility of evidence are leading to new procedures and also require more work, as do the advances in technology and the increasing globalisation of crime that add a fresh layer of complexity to criminal investigations.

Other reforms and measures

Similarly, whilst disclosure has been with us for some years now, it still forms a very substantial part of our work, particularly in the more serious cases. It is extremely resource intensive and was ‘absorbed within existing resources’ at the time, despite
adding significantly to our workload. It is not uncommon, also, for the court to require prosecutors to disclose material again that was previously disclosed for expediency, all at additional cost to COPFS.

We know that work continues within COPFS to exploit new technology solutions and streamline work practices in order to deal with the challenges we have outlined above. The continued difficulty for our members in such a strategy is that any benefit felt in such changes may not be realised for months or years down the line. Moreover, the success of some of those initiatives is dependent on COPFS being able to “spend to save” which in the current climate is very difficult indeed without additional resource. Some of our members report to us that they are already struggling to cope with their workloads and need to see a solution to alleviate that pressure far more quickly than can be delivered. Our fear is that the change programme can only seek to mitigate against the impact that the real-terms budgetary cuts are having.

COPFS is rightly committed to making an ongoing contribution to the communities it serves and our members undertake a wide range of stakeholder engagement locally and nationally – with particular acknowledgement of our work on equalities - but again this comes at a cost which may not be sustainable if the current financial position remains the same or worsens.

We welcome steps taken by COPFS to undertake a review of prosecution policy to ensure that our decision making continues properly to reflect the public interest and interest of justice. We welcome, too, the action taken by COPFS recently to revisit our structures to take account of feedback from our members and to better position COPFS to cope with the hefty demands placed on it. We fear, though, that these steps may not be sufficient to meet those demands given the financial reality facing the public sector.

We continue to hear anecdotally from members that such issues remain of concern to them and of the significant challenge they face in continuing to deliver a high quality service and the cost to them of that. The FDA is committed to protecting the health and well-being of our members. The FDA is concerned that may be at risk and, with it, it may risk the capacity of prosecutors to continue to deliver the standard of service they wish to.

Summary

Fundamentally, the position of the FDA is that whilst it is not the business of a trade union to dictate the details of any government’s budget, the resources available have to match the commitment of service provision demanded of that organisation. It follows therefore that either:

- COPFS requires to be adequately resourced; or
- Decisions require to be taken to review the commitment required from the Service.

The professionalism and dedication of Procurators Fiscal to the public interest is steadfast, but their task is increasingly difficult against that background. There is,
already, a risk that current conditions may place the health and welfare of prosecutors in jeopardy and that morale may deteriorate further.

We cannot see how COPFS can continue to deliver current or improved standards of service with fewer staff. 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.

In conclusion, we would wish to be clear that our evidence should not be seen as an attack on those who manage COPFS. As indicated above, we know that our senior managers are working hard to find solutions to the challenges for COPFS from within existing resources. We believe they have been set an unrealistic task.

SCS and senior grades within COPFS have been greatly reduced which has placed significant additional burdens on managers at these and at lower levels.

Our relationship with senior management is an open and constructive one, especially in these difficult financial times. We have our differences but, generally work together wherever possible to ensure that the department, our members and the wider stakeholder community benefits from the work of organisation.

We hope this information is helpful to the committee.

We would of course be happy to expand upon the above in oral evidence if required.

Procurator Fiscal Service Section of the FDA
19 October 2016