Justice Committee

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

Written submission from the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

We welcome the opportunity to provide evidence to the Committee that is the result of wide consultation among members of the Scottish Jewish community.

1. Please outline your views on the overall efficiency and effectiveness of the COPFS in its core role of considering reports about crime from the police and bringing prosecutions. Are there ways in which the services provided by the COPFS could be improved – for instance, through increased use of technology, further reforms to criminal procedure, or better case management? If so, do those changes also bring risks, in terms of the overall interests of justice or of access to justice (bearing in minds the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc)?

Unfortunately the Jewish Community has recently had significant experience of dealing with the agencies of law enforcement in Scotland, including both Crown Office itself and a number of local Procurators Fiscal. Although our first study of the experience of Being Jewish in Scotland¹, funded by the Scottish Government in 2012, found that, with some exceptions, the consensus was that “Scotland’s a darn good place to be a Jew”, only two years later that picture was reversed following an unprecedented upsurge in antisemitic incidents in the middle of 2014². The Scottish Government then commissioned a further study of What’s changed about being Jewish in Scotland³ which found that amongst the more than 300 respondents (more than 5% of the number of people who identified as Jewish in the 2011 census), 25%

¹ www.scojec.org/bjis_findings.html
³ www.scojec.org/bjis2_findings.html
told us that they had been victims of, or been affected by, a hate crime or incident (and a further 12% said they were unsure), and in particular, that antisemitism in social media was a significant concern.

We have, sadly, been in the position of supporting victims of hate crime on a number of occasions, and have been impressed by the level of support that COPFS has provided. Following the conclusion of one case, in which the victim was a Jewish student studying at St Andrews University, the Chair of Scottish University Jewish Chaplaincy stated: “We much appreciate the diligence, impartiality and determination of the Scottish prosecution authorities – both in Fife and nationally – in pursuit of justice. Their care of and communication with the victim of this crime has been an exemplar of best victim focused practice.”

The Jewish Community has also been grateful for the outspoken support of the former Lord Advocate and others, including the willingness of the Lord Advocate, the Solicitor General, and senior area Procurators Fiscal to meet representatives of the Jewish Community. We are also grateful for their periodic updates on the progress of outstanding cases, as well as for the political expression of “zero tolerance” for antisemitism as for all forms of hate crime. That said, however, our experience has unfortunately been that the reality falls significantly short of these assurances: the wheels of justice grind so slowly that in some cases prosecutions have had to be deserted because the passage of time has resulted in witnesses having moved abroad, police witnesses being unable to consult their notes, in one case a Sheriff having to withdraw because of illness, and concerns under Article 6 of the Convention. We are also aware of a number of occasions when police officers have told victims of harassment that the intimidation they suffered was not serious enough to amount to a crime, or that harassment on ground of nationality is not a breach of the law; in some cases these statements were made by local officers (sometimes quite senior) at the time, so cannot have been informed by legal advice from the local Procurator Fiscal or COPFS, and they are patently incorrect. Consequently, victims have told us that they feel let down, and indeed that the law has left them exposed to further abuse and harassment by the same perpetrators, and, furthermore, these experiences make it less likely that they will report future incidents to the police.

Better and more prompt communication with victims and witnesses would not eliminate these problems, as the issue is not how prosecutors communicate with them, but what it is that they have to communicate. Although we appreciate that many of these concerns lie outside the narrow responsibility of COPFS, we believe that it is the entire prosecutorial process, from investigation and arrest by the police,

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5 [see for example:](http://www.scojec.org/news/2014/14vii_antisemitism/antisemitism_2.html)
to conviction by judge or jury, that requires reform in order to deliver more satisfactory outcomes.

We are not in a position to make specific suggestions for improvement, although it might be that better case management systems, a different approach to court diaries that gives priority to continued cases, and a higher threshold for granting postponements might all assist.

2. Please outline how well you consider the COPFS works with other stakeholders in the criminal justice system, so as to provide a joined up and complementary service that helps meet the ends of justice. Other stakeholders might, for instance, include the police, defence lawyers, the courts, the prison service, criminal justice social work, and third party organisations working with victims or offenders.

As noted above, we appreciate that COPFS is only one of the agencies involved in the handling of criminal cases, and that delays can occur at any stage. We have been grateful for the support of individual Procurators Fiscal in attempting to ensure prompt hearing of the evidence by resisting more fanciful applications for postponement, but this is a matter for the judge rather than the prosecution. Delay can only assist the perpetrator to the detriment of the victim, so a way must be found to limit this abuse of the system.

3. Does the COPFS as presently constituted have the resources and skillsets it needs to carry out its core role effectively? And is it appropriately future-proofed for instance to deal with new technologies available to criminals, changes in the overall profile of crime in 21st century Scotland, or withdrawal from the European Union? If not, what additional capacities does the COPFS need?

We do not feel qualified to answer this question, but we would express concern about the ability of the criminal justice system as a whole to respond effectively to internet-based crime, and in particular hate crime expressed through social media, even when the perpetrator is identifiably in Scotland. Our experience includes cases being deserted or not even reported to the Procurator Fiscal: in one case the owner of the computer from which an abusive message was sent claimed it was being used by someone else (at 1am, in his home, where he lived alone), and in several others the police gave up after encountering the perennial difficulty of obtaining information from US-based hosts.

More generally, we welcome the commitment in the COPFS Equality Outcomes to “Provide all COPFS staff with mandatory learning and development programmes on equality and diversity issues and set standards of behaviour” (Equality Outcome 4), and to make these standards enforceable. We trust that instructions for all COPFS

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staff are now in line with the best practice offered by many, in order to provide all sectors of the community with a consistent, sensitive, and effective service.

4. **How well does the COPFS respond to the needs of victims of crimes and to witnesses (especially vulnerable witnesses) in criminal cases and meet its legal obligations towards them?**

We welcome the commitment to ensure that the “COPFS website has up to date information about facilities available at each Procurator Fiscals’ Office” (Equality Outcome 3). However, this alone is not sufficient to ensure that “People have equal opportunity to avail themselves of COPFS services”, so we hope that COPFS will indeed “Make changes … where equal access to service issues arise”.

However, as we have commented above, the problem is not how COPFS and others communicate with the victims, but what it is that they have to communicate. That said, formal letters some weeks after a court appearance are not adequate, and prosecutors should be required to update victims in particular by e-mail or telephone within 24 hours of a hearing, even if that is then followed by a formal letter.

Direct contact with prosecutors should also be facilitated, and we therefore welcome the recent introduction of cheaper geographic telephone numbers in place of the previous premium rate 0844 prefix.

5. **The Inspectorate of Prosecution in Scotland is the independent, statutory inspectorate for the COPFS. What is your awareness of the existence and role of the IPS and of its effectiveness in carrying out that role? How effective has it been in carrying out its role? Does it appear to have the resources it needs?**

We have no experience of dealing with the Inspectorate and do not wish to comment.

Scottish Council of Jewish Communities
19 October 2016