The Scottish Justices Association (SJA) represents the interests of Justices of the Peace across all six Sheriffdoms in Scotland, and as we have daily contact with COPFS, we felt it appropriate that we should respond to the consultation request issued by the Scottish Parliament’s Justice Committee. In our role as JPs we do have contact with limited activities of COPFS and therefore we are unable to comment fully on all five questions posed in the consultation request, accordingly our views are primarily concerned with the first two questions raised. We issued a request for the views of our members in mid-September following publication of the consultation request and the comments which follow are a distillation of the views expressed by our members.

As a preface to our comments the SJA would specifically wish to mention the skill, professionalism and dedication of the COPFS staff that we encounter on a daily basis. Their efforts contribute enormously to the smooth running of all Justice of the Peace Courts in Scotland, and we would like to acknowledge and appreciate their work. The following comments therefore should not detract from the existing highly motivated staff currently employed within COPFS.

The primary concern raised by our members was the apparent lack of resources. This is most clearly manifest when cover is required for an unexpected absence of staff. A number of JPs reported that Courts have been delayed whilst a substitute Procurator-Fiscal Depute is found to cover a Court; sometimes in rural locations this may involve a lengthy journey.

The lack of resources is also evident in the lack of time that some COPFS staff have in the preparation of cases. This is particularly pertinent in trials which are heard in the busier Courts in the Central Belt area. Due to the workload on the individual Procurator-Fiscal Deputies, they simply do not appear to have any time prior to a case being called to prepare their case and identify the key issues. This clearly puts them at a disadvantage when faced with a defence agent who has had ample time to prepare.

In a similar vein a number of JPs identified that there is a very high turnover of junior Procurator –Fiscal Deputes. It appears that COPFS appoint Trainee staff on fixed two-year contracts, and they undertake training at various locations. At the end of the two-year period if a permanent vacancy does not exist then they are simply released from their contracts. As a consequence of this policy there is a high turnover of trainee Procurator-Fiscal Deputies. The position in the Justice of the Peace Courts is particularly acute as, quite understandably and correctly, the Trainee staff work in the relatively less demanding and complex cases that occur in the JP Courts. This high turnover of staff does give rise to a relatively high ratio of cases where the Crown is represented by an inexperienced Procurator-Fiscal

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Depute, and is a situation which is exploited by the more experienced defence agents.

In addition to Court specific issues our members did raise the apparent lack of administrative support to COPFS. Several members mentioned the fact that case files are frequently not fully maintained and this can cause difficulties in ensuring that the Intermediate Diet gives a full and proper representation of the Crown’s position. Some of our members felt that the Procurator-Fiscal Depute would sometimes indicate a readiness for trial that was based on expectation rather than fact. This could have resulting impact on the trial itself and could increase the rate of ‘churn’ in trials. Our members also reported that on several occasions the accused in a case have reported in Court that they had contacted the Fiscal's Offices to report an issue or to deliver documents that then do not appear in the case file or notes. It would appear that this lack of internal communication is down to limited or over-stretched administrative support.

A further issue that was raised by some of our members in primarily the more rural areas, was the fact that all cases are centrally marked by COPFS staff, and that they could not therefore take into account local matters or factors. This centralisation of the marking of cases has clear administrative benefits but it can be to the detriment of certain cases where local knowledge could affect the applicable law, or nature of the offence. It is felt therefore that there could be an improvement in the balance between local knowledge and the central marking of all cases coming forward to the JP Courts.

Overall our members felt that they enjoyed good working relationships with COPFS staff. Some Sheriffdoms identified that they had central point of contact from within COPFS for any matters which arose. Furthermore, most Sheriffdoms confirmed that COPFS contribute actively to the training needs of JPs and participate in training events. We would hope that all Sheriffdoms could have a central point of contact for JPs from within COPFS, and would recommend this.

You will note that we do feel that we are unable to respond appropriately or in a meaningful manner to the issues of the technological capabilities of COPFS, nor on meeting the needs of witnesses and victims of crime, or on the role of the Inspectorate of Prosecution in Scotland. Our comments are on the efficiency and effectiveness of COPFS and the way with which it interacts with our members. Our inescapable conclusion is that COPFS is a very good service but would certainly benefit in many key functions from additional resources being made available to it.

Dennis Barr
Secretary SJA
19 October 2016