I refer to the above and to your correspondence dated 31 October and thank you for inviting the Scottish Police Federation (SPF) to contribute to the work of the Committee.

The SPF wishes to be clear in the responses that follow that we place no personal slight on the staff of the COPFS. It is the experience of our members that when they deal with COPFS staff, they are inevitably dedicated, professional and incredibly hard working.

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)?

We consider that this question it too narrowly framed as the COPFS has a remit that extends beyond simply bringing prosecutions. For example the need to act in the public interest and in the investigation of deaths including the holding of Fatal Accident Inquiries (FAIs).

The SPF previously gave evidence on some of the opportunities (and challenges) that the COPFS faced when the subject of sheriff court closures was being considered and we remain of the view these opportunities and our comments at that time remain valid.

Whilst we have no direct knowledge of the workload demand and staffing in the COPFS, it appears the service is overwhelmed with work and that those working within it are under considerable pressure as a consequence.

It is the experience of our members that when matters get to court, the Procurators Fiscal are often unprepared and lack knowledge of the case. If we also look at the significant delays in holding FAIs as an example, it is difficult to envisage that any technological advancements could expedite the current processes. This suggests that the service is understaffed.

There are however examples of what appear to be COPFS policy decisions directly impacting on the capacity of the courts and by extension the COPFS staff. These primarily relate to cases (usually but not exclusively domestic violence cases) where
it is known from the outset that there is not a sufficiency of evidence to secure a conviction, yet the case proceeds regardless.

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.

Please see the response at question 3 below, which in part responds to what is asked above. Additionally the experience of our members, particularly with the advent of central marking units has been that rather than create a complementary service, the COPFS relationships with the police service are increasingly disjointed. We will leave it to other bodies to comment from their perspectives.

The loss of local knowledge and difficulties in developing (due to remoteness) professional relationships inevitably means that simple things like knowledge of an accused or of his or her background for example, results in an unwillingness to deal with cases quickly. Difficulties in getting access to local Fiscals to respond to even simple inquiries can lead to frustrations, significant bureaucracy and delay.

The centralisation of administration and lack of local autonomy is problematic in terms of marking and process. Simple tasks like the re-citing of witnesses at adjournments could be easily resolved at court if Fiscal’s offices had the ability to produce new citations. However this capability has been removed and results in additional administration costs for the COPFS and police service in terms of processing and service.

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?

The experience of police officers dealing with the COPFS varies significantly. Our members report that where they are dealing with what might be termed traditional complex and serious cases, their engagement and liaison with Procurators Fiscal, is in most cases second to none. This is demonstrated in a number of ways from briefings and real time communications whilst investigations are ongoing. The result of this engagement and liaison sees much more “polished” case files being submitted and being dealt with by a Fiscal who has a proper understanding of the matters therein. These experiences suggest that in broad terms, the COPFS has the skills for such matters.

However serious and complex cases do not make up the bulk of the work of our members and in many other areas their experiences are less positive. These are commented on elsewhere in this response.
The SPF has engaged with members who work in some of the more specialised areas of policing to help us to respond to this specific question on skills and new technologies. Their comments are unequivocal – the COPFS does not have the skill set to carry out its role effectively. There is a strong feeling that in cases involving new technologies, a large number of Procurators Fiscal do not understand the legislative frameworks and are inconsistent in their expectation of the police.

It is the experience of our members that Fiscals individually interpret legislation rather than adopt a uniform approach. This is inherently problematic as what may be acceptable by one Procurator Fiscal can be unacceptable to another.

Given the relatively limited resources the police service has to deal with such matters, police officers can find themselves being pulled in different directions by different Procurators Fiscal, seeking the same outcomes. Despite having in house expertise, there can be a reticence to utilise this and private companies are relied on at additional cost. There is also inconsistency between Fiscal’s offices in what they ask for and it appears to our members that a lack of understanding of the information Fiscals have before them means they are often not able to properly communicate this to the courts.

The SPF has no way of knowing whether this is a resource or a training issue.

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?

Setting aside the creation of the Victim Information and Advice Service (VIA) which we comment on later in this section, the SPF believes that the COPFS needs to significantly “up its game” in both its dealing with victims and witnesses. This is especially true when it comes to the court experience where what can only be described as farcical levels of disturbance and inconvenience are experienced. We appreciate that court scheduling is a matter not directly in the hands of the COPFS but the volume of cases that can be laid down for a particular court hearing are by any measure unrealistic. It appears to the SPF that large numbers of cases are called, not because there is any prospect of the case being heard, but to ensure timescales can be adhered to.

If there is any consideration for the incredible inconveniences (and often personal expense) incurred by police officers having their shift patterns changed and rest days disrupted to attend court, there is little practical evidence of it. The police service has been dealing with this issue for as long as can be remembered and despite a plethora of trials and initiatives to address this problem, it continues to be one of most persistent complaints about the COPFS.

Clearly the SPF speaks only for our members but their experiences are directly relevant to those of other witnesses and victims. The frequency with which our members are cited, only to see cases adjourned or abandoned is far too high. In many cases these adjournments and abandonments see victims lose confidence in the justice system and witnesses increasingly frustrated at having to waste their days lolling around court corridors. These witnesses and victims speak to police officers
and it is not uncommon for them to express their reluctance to become involved in the future, based on their frustrations at the inefficiency of the court processes.

Whilst the SPF recognises the rationale deployed for the closure of many courts there can be little doubt that the added inconvenience of travelling greater distances, only to experience these inefficient practices itself acts as a disincentive to become involved (at least for a second time) in the criminal justice arena.

There can be no doubt that the creation of the VIA has represented a significant improvement in the type and quality of information conveyed to victims. It is however the experience of our members that the bulk of the expectations for delivering on and servicing the VIA, fall directly on the police service.

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.

The Scottish Police Federation is not aware of the IPS and cannot comment on its resources or effectiveness.

I trust you find this response is helpful to the Committee’s considerations and should you require any additional information, I would be happy to do so on request.

Calum Steele
General Secretary
11 November 2016