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Role and Purpose of the Crown Office and Procurator Fiscal Service



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Justice Committee

Remit: To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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Executive Summary

Last year the Crown Office and Procurator Fiscal Service (COPFS) considered over 225,000 reports about crime. Each working day it decides whether to prosecute or take some other action on hundreds of cases – from minor traffic offences to murder. The head of the COPFS is the Lord Advocate; a full member of the Scottish Government but one whose independence as chief prosecutor is protected by statute.

During almost five months of evidence-taking, the Justice Committee heard praise for the COPFS, its professionalism and its dedicated, hard-working staff. On the whole, the public should have confidence that it is a rigorous and fair prosecutor.

However, the service remains under considerable pressure. There can be no room for complacency

Statistics in recent years indicate above-average numbers of staff on sick leave or reporting that they are overworked. According to the prosecutors' union; the FDA, the COPFS's funding has declined in real terms by over a fifth in under a decade. In 2017-18, it expects to shed around 30 staff in reaction to budgetary constraints. Meanwhile, pressures on the service have grown: there are more complex cases; the service's legal responsibilities to the defence and to victims and witnesses have increased; and reform of the criminal law continues apace.

Witnesses' overall perception was of a "just about managing" prosecution service, lacking the time and resources to always get things right:

- It was widely agreed that the COPFS sometimes communicates poorly with other stakeholders;
- The COPFS rightly prosecutes robustly certain types of case known to impact heavily on victims. However, the Committee heard evidence that standard summary cases which include instances of antisocial behaviour, crimes of dishonesty or less serious violent crimes, are sometimes under-prioritised;
- At the other end of the spectrum, doubts were expressed about how well equipped the service was to deal with more specialist prosecutions, for instance health and safety or complex fraud cases.

In relation to prosecutions in domestic abuse cases and certain other types of case that the Lord Advocate has deemed to be prosecution priorities, the Committee heard mixed evidence: on the one hand, that the COPFS is prosecuting these cases with precisely the rigour they deserve; on the other that policies are being applied too rigidly and that sometimes the wrong cases end up in court.

The Committee also heard mixed views on the COPFS's drive towards a more centralised and specialised prosecution service. There was evidence that it had helped drive up standards within the service. However the overall perception was of a service less attuned to local needs than in the past. Local fiscals were seen as having less capacity to exercise their judgment in individual cases. This was seen as bad for efficiency and bad for morale.

There was a weight of evidence testifying to delays and postponements (known as "churn") during the trial process. Churn wastes time and money and lowers overall confidence in the criminal justice system. The Lord Advocate made clear to the

Committee that reform of the system is a personal priority, but evidence during the inquiry underlined that the COPFS cannot be the sole agent of change. There are systemic failings that it is beyond the power of the service to rectify on its own.

The COPFS and Scottish Government have placed high hopes in an ongoing Evidence and Procedure Review, which aims to modernise and streamline criminal procedure in large part by harnessing modern digital technology. One of its main proposals is to greatly reduce the amount of evidence that needs to be taken in court. If this can be achieved, there is real potential to make the system much more efficient.

However the Committee is concerned that there is no timeline for completion of the Review and is not certain whether the COPFS and other agencies will have the resources they need to fully implement it. In the meantime, there is more the COPFS could do to both reduce and mitigate inefficiencies:

- It should avoid scheduling trial dates that are unlikely to proceed;
- It should find better and quicker ways to notify scheduling changes to witnesses. Having witnesses waiting for hours each day for hearings that are almost certainly not going to proceed is unacceptable.

Victims and access to justice should be at the heart of the prosecution process but whilst the COPFS, rightly, prosecutes in the public interest, it is not “the victim’s lawyer”. The balance it must strike is not always easy, particularly in a time of limited resources, when the service’s main focus is often simply on keeping the system working.

Here the Committee was concerned by evidence that the current process sometimes leaves victims and witnesses feeling marginalised. Many spoke of the lack of contact they had had with the service before or during the trial or highlighted errors of communication. Others went further, saying that the experience of taking part in a trial had re-traumatised them, made them feel unsafe, and left them questioning whether they would go through it again. Addressing this issue is of the utmost importance.

Giving evidence in a criminal trial is not an easy or pleasant experience, but the evidence the Committee received raised questions as to whether the current system, of which the COPFS is a key part, fully meets its duty of care towards victims and witnesses. The COPFS itself has acknowledged that change is needed. The Committee believes that there is a need for the Scottish Government to review victims’ rights.

During the inquiry, the Committee also sought views on the Inspectorate of Prosecution, which provides an independent check on the COPFS. Two issues emerged: the Inspectorate’s low profile and the lack of awareness of its output, and a perception that its independence may be compromised by routinely employing seconded or former COPFS staff. The Committee believes that both issues must be addressed if the Inspectorate is to fulfil the role it was intended to carry out when it was established.

Finally, the Committee notes with concern the reluctance of some COPFS employees to come forward to express their views during the inquiry.

Key terms

An outline of the prosecution process in Scotland is set out in paragraphs 71 and 72.

Lord Advocate: Ministerial head of the COPFS and chief prosecutor. High Court cases are prosecuted in his name. He is a Minister and member of the Scottish Cabinet. Like his recent predecessors, the current Lord Advocate, James Wolffe QC, is a career lawyer rather than an elected politician but, as a Minister, he is bound by the doctrine of collective responsibility;¹

Solicitor General: his deputy (currently Alison di Rollo QC), a junior Minister;

Crown Agent: chief executive of the COPFS and chief legal adviser on prosecution matters to the Lord Advocate;

Advocates Depute: one of two main branches of the prosecution profession, these are High Court prosecutors, normally senior advocates or solicitor-advocates recruited for a particular period, after which they may return to private practice. Those prosecuting the most serious or complex High Court or appeal cases are Senior Advocates Depute;

Procurators fiscal: area heads of the prosecution service for sheriff and JP court cases, or heads of specialist prosecution units for non-High Court cases. They are assisted by fiscals depute. Traditionally, there has been more of a career structure within the fiscal service than at advocate depute level, with some fiscals spending their entire professional career in the service;

Solemn procedure: the procedure for the most serious crimes, with the most serious of all (usually murder, rape, or other serious sexual offences) dealt with in the High Court, the rest in the Sheriff Court. Trials under solemn procedure are before a jury;

Summary procedure: less serious criminal cases, which are heard in either the Sheriff or JP Court. The vast majority of cases are dealt with under summary procedure. There is no jury in a summary trial.

Introduction

1. The Crown Office and Procurator Fiscal Service (the COPFS) plays a critical role at the heart of Scotland's criminal justice system. It has been almost 15 years since the completion of the last major Parliamentary inquiry into the service.² In that time, the profile and reporting of crime in Scotland has changed, in tandem with wider social and demographic changes. Significant legal developments affecting both criminal offences and criminal procedure have placed new responsibilities on prosecutors, whilst court judgments have changed key aspects of criminal procedure. The service itself has gone through at least two major internal structural reforms. There is also the issue of funding: for the entire public sector, the 2008 financial crisis continues to have an impact on resources, and the COPFS is no exception.
2. The Committee formally agreed to launch an inquiry into the COPFS at its 6 September 2016 meeting. This followed immediately on from a visit to Inverness, the complementary purposes of which were to meet some key stakeholders in criminal justice and to reflect on priorities for the 2016-21 Parliamentary session, in order to agree an initial work programme. The Committee emerged from this with a commitment to make scrutiny of the COPFS the first major inquiry of this session, in view of its vital importance to the justice system and its relative neglect, in terms of Parliamentary scrutiny, in recent years.
3. In summary, the Committee considered an inquiry to be overdue.
4. Amongst those whom the Committee met in Inverness was the new Crown Agent, David Harvie, who referred to the challenges facing the COPFS. He said that it would take new ways of working to address these comprehensively and made clear his commitment to a reform agenda. He assured the Committee that the new Lord Advocate and Solicitor General both shared this view. For the Committee, this underlined that the launching of the inquiry seemed timely. New leadership at the COPFS brings with it the opportunity for fresh thinking on the organisation's role, direction and purpose, and the Committee hopes this report will contribute towards that process.

About the COPFS

5. The COPFS describes itself as "Scotland's prosecution service"³ and, in effect, exercises a practical monopoly in that role.⁴ The COPFS explains—



We receive reports about crimes from the police and other reporting agencies and then decide what action to take, including whether to prosecute someone. We also look into deaths that need further explanation and investigate allegations of criminal conduct against police officers.

” COPFS plays a pivotal part in the justice system, working with others to make Scotland safe from crime, disorder and danger. The public interest is at the heart of all we do as independent prosecutors. We take into account the diverse needs of victims, witnesses, communities and the rights of those accused of crime. We support the Strategy for Justice in Scotland and, in particular, its priorities of:

- Reducing crime, particularly violent and serious organised crime
 - Tackling hate crime and sectarianism
 - Supporting victims and witnesses
 - Increasing public confidence and reducing fear of crime⁵
6. The COPFS employs around 1600 staff⁶ at 51 properties⁷ across Scotland, with its headquarters at Chambers Street in Edinburgh. As of December 2016, it had 533 legally qualified staff.⁸ Just over 100 of the remaining staff worked in the COPFS’s Victim Information and Advice (VIA) service, with the remainder holding other non-legal administrative posts.
7. The COPFS is a distinct department within the Scottish Government headed since June 2016 by the Lord Advocate, James Wolffe QC. The COPFS’s 2017-18 budget stands at just over £111 million and has been at around this mark since the aftermath of the 2008 financial crisis.⁹ This of course amounts to a significant real terms decline.¹⁰ Examining how the COPFS is coping under these straitened circumstances was one of the catalysts for this inquiry.

Inquiry remit

8. In launching the inquiry, the Committee agreed this remit—

” The COPFS is Scotland’s independent prosecution service, acting in the public interest to help bring offenders to justice. The core role of the COPFS is to consider reports about crime from the police and other agencies, to decide whether it is in the public interest to prosecute them, and, if so, to deploy the resources that are necessary to help ensure that justice is done. The Committee’s inquiry will focus on this core role, examining in particular—

- The effectiveness and efficiency of the COPFS, and how well it works with other stakeholders in the criminal justice system;
- Whether the COPFS has the resources and skillsets it needs to carry out its core role;
- The COPFS’s responsiveness to new challenges and opportunities including the evolving nature of crime in 21st century Scotland, advances

in technology, and changes in the delivery of court services that may affect access to justice;

- How the COPFS protects and supports witnesses and victims of crime.



The Committee will also take evidence on the role and function of the Inspectorate of Prosecution in Scotland. (The IPS is the independent inspectorate for the COPFS.)



The inquiry will not consider the COPFS's two other roles of establishing the cause of sudden, unexplained or suspicious deaths or investigating allegations of criminal conduct against police officers, except in relation to the general issue of whether the COPFS has the resources it needs to carry out its purpose.

9. The COPFS's role in investigating deaths is an important one, but was excluded from this inquiry because the Committee saw it as a distinctive issue which had been scrutinised in the relatively recent past, when the previous Justice Committee, and the Parliament, considered and approved legislation to modernise the relevant law.¹¹ In addition, two public petitions carried over from last session concerning the investigations of suspicious or unexplained deaths remain under consideration.¹² Investigating criminal allegations against police officers is another distinctive and quite specialist aspect of the COPFS's role that the Committee agreed should be separated out from this inquiry. The Committee wanted to have a clear focus on the effectiveness of the Crown's core role in prosecuting crimes.

Independence of Lord Advocate as head of prosecution service

10. The focus has also turned out to be squarely on practical issues. Most stakeholders did not advocate sweeping constitutional or administrative reform in their evidence.¹³ They accepted the ongoing existence of the COPFS as Scotland's prosecution service, with the Lord Advocate at its head, as a fact on the ground and wanted to concentrate on bread-and-butter issues concerning how it performed in that role. It is these issues that the report therefore focusses on.
11. However, one constitutional issue was touched on briefly in evidence. It is a long-standing principle, now enshrined in statute that, in his role as head of the prosecution service, the Lord Advocate should act independently.¹⁴ (It has also emerged as a relatively recent convention that the Lord Advocate is not a party politician.) Some questions were posed as to how the Lord Advocate maintained his independence in practice, given that he is also, under the Scotland Act 1998, a Minister and is subject to the principle of collective ministerial responsibility, as well as being principal legal adviser to the Scottish Government. This issue was raised with both the Lord Advocate¹⁵ and the Cabinet Secretary for Justice.¹⁶ Although the discussion was not extensive, the Committee was satisfied that the Lord Advocate and the Cabinet Secretary take the principle of independence seriously, and take steps to avoid compromising it.

12. The Committee notes views, particularly from the defence bar, that the COPFS may sometimes have allowed itself to be over-influenced by media-driven or political concerns about the prosecution of particular types of crime.¹⁷ During the inquiry, this mainly played out in a discussion as to whether current prosecution policies in relation to domestic violence effectively served the public interest. There were strong views on both sides. In the course of this discussion, the Lord Advocate took the opportunity to explain that he alone determined prosecution policy but that—



In setting prosecution policy, I seek to respond to criminality as it affects people in communities in society today and to respond to changes in our appreciation of different forms of criminality.¹⁸

13. These comments are reflective of the balancing act the Lord Advocate, and the COPFS, must perform in terms of prosecution policy. The COPFS must be somewhat above the fray but it should not be aloof from public concerns. The public interest would not be well served if the COPFS became regular participants in a running commentary on criminal justice priorities in the media or in the political arena. On the other hand, the COPFS is charged to act in the public interest and is, or should be, to some extent a public-facing body. It is right that its leadership should reflect on whether its policies and practices truly reflect public concerns and how effectively it responds to the public, whom it serves.
14. The key benefit of the principle of prosecutorial independence is that it helps insulate the Lord Advocate (and the COPFS generally) from political interference in his decision-making, in relation both to policy and to individual cases.¹⁹ The Committee is clear that this does not mean that politicians must exclude themselves from public discussion about the role and purpose of the COPFS. The COPFS itself made clear that it welcomed the inquiry as an opportunity to make its role better understood,²⁰ and the Committee welcomes that positive view. Praise for the hard work and professionalism of the COPFS's frontline staff, under sometimes challenging circumstances, has been a recurring theme of this inquiry,²¹ and any recommendations, even critical ones, made in this report are proposed in a constructive spirit, in the hope that they might ultimately help them in their challenging role.

The Committee's scrutiny

15. The Committee took evidence at nine meetings in October, November, December and January hearing from representatives of a wide range of organisations with an interest in the COPFS's work, as well as the Cabinet Secretary for Justice and of course the COPFS itself. Links to those meetings are set out in Annexe A to this report.
16. The Committee held informal meetings with individuals who, for understandable reasons, preferred not to give evidence in public: three victims of crime whose cases had recently been prosecuted, and two recent COPFS employees now

working as defence solicitors. Notes of these meetings are set out on the Committee's webpages²² and in Annexe B to this report.

17. The Committee also gathered information relevant to the inquiry during visits to Inverness and Hamilton, and to Edinburgh sheriff court. Members met staff from the COPFS, the Scottish Courts and Tribunal Service (SCTS), and the Scottish Prison Service as well as defence solicitors, local journalists, criminal justice social workers, and organisations supporting victims in the criminal justice system.
18. A call for written evidence was issued on 11 September.²³ This posed five questions relating to the inquiry remit, as discussed further below. By the conclusion of evidence-taking, the Committee had received 66 submissions (including supplementary submissions) that were accepted as evidence. Two of these were accepted on a basis of anonymity, one of these being from a serving prosecutor. The Committee notes that there was a reluctance on the part of COPFS employees to give evidence in an individual capacity. All written evidence to the inquiry is set out in Annexe C to this report
19. The Committee is grateful to all those who contributed to its information-gathering during this inquiry for their time and expertise and to the COPFS and SCTS staff who helped facilitate visits.

2017-18 budget process

20. The Committee decided to focus the limited time it had for scrutiny of justice-related aspects of the 2017-18 draft Scottish budget solely on the COPFS. This occurred in December and January, at the same time as the Committee was gathering evidence for this inquiry. The Committee made use of relevant inquiry evidence to help inform its budget scrutiny and its report to the Finance and Constitution Committee (see footnote for link) that concluded this work,²⁴ and vice versa.

Outline of the report

21. The rest of the report is structured around the main questions posed in the call for written evidence, relating to—
 - the adequacy of the COPFS's resourcing;
 - the effectiveness and efficiency of the COPFS in its prosecuting role;
 - its communication and working relationships with other stakeholders in the criminal justice system and its relations with victims and witnesses;
 - stakeholders' views of the Inspectorate of Prosecutions.

22. Evidence received in answer to the first three of these questions overlapped somewhat. (The last issue stands apart.) The issue of funding is dealt with first because it was seen as fundamental by so many stakeholders.

The COPFS's resources and staffing

23. The last major report on the COPFS by a Parliamentary Committee was published in 2003, at the end of an inquiry that had begun in 2001.²⁵ In it, the then Justice 2 Committee identified under-resourcing as a key concern. It referred to a service under “extraordinary pressure” and to what it called a “complacent” attitude towards the funding of the COPFS that had led to the build-up of “an unacceptable level of risk in the system”.²⁶ The report referred to low staff morale, stress and overwork. Concerns over COPFS resourcing are therefore not new.
24. In the years following the 2003 report, funding for the COPFS followed an upward trend. The peak was in 2009-10 when the budget stood at £118.3 million. Since then, the trend has been downward. The budget for 2017-18 is £111.1 million. A further breakdown of this funding is set out in this Committee's January 2017 report to the Finance and Constitution Committee on the 2017-18 Draft Budget.²⁷
25. Taking 2009-10 as a baseline, the Procurator Fiscals Section of the FDA union told the Committee (prior to agreement of the 2017-18 Budget) that—

” If our budget had kept pace with inflation, by 2016 this would have amounted to £144.5 million. 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%.²⁸

Demands on COPFS resources: recent trends

26. Evidence to the inquiry portrayed the service as being squeezed not only by decreased resources but also by increasing demands. These included—
 - *the changing profile of crime*: the general trend of reported crime in this century has been downward.²⁹ However, the number of cases proceeding to trial has trended slightly upward in the last 5 years.³⁰ Moreover, evidence pointed to a parallel trend of more complex and demanding cases increasing in number, particularly those relating to historic sexual abuse.³¹ These cases are resource-intensive for the COPFS; both for prosecutors and for the VIA service. The Inspector of Prosecutions told the Committee that she had identified such cases, which now constitute around 70% of High Court cases,³² as being at “high risk”, in terms of reputational damage and the effective prosecution of crime, because of the ongoing squeeze on COPFS resources;³³
 - *pace and degree of legal reform*: the post-devolution period has been unprecedented in terms of criminal legal reform. There are scores of new criminal offences on the statute book. The COPFS's evidence indicated that, however necessary or welcome these reforms may generally be, some new provisions in particular have placed considerable demands on the service.³⁴

There have also been extensive reforms to criminal procedure and more are currently coming on-stream as the Criminal Justice (Scotland) Act 2016 is gradually implemented. In some cases, the intention of reform may have been to simplify and clarify the rules, and to streamline processes, but the changes have been extensive and new rules still have to be learned and assimilated;

- *victims and witnesses*: a particular subset of law reform relates to the rights of victims and witnesses. The rights of victims and witnesses during the course of a prosecution have been clarified and extended by law in recent years.³⁵ These changes are welcome but have placed additional responsibilities on the service, particularly in relation to persons classified as “deemed” vulnerable witnesses. The Committee was informed during the inquiry that the blanket way in which aspects of this provision work is not always useful in practice, but COPFS evidence indicates that a legislative fix would be required to address it;³⁶
- *disclosure and agreement of evidence*: case law and legislative reform in recent years have widened the COPFS’s duties to disclose certain evidence to the defence.³⁷ The COPFS indicated that, whilst demanding at the time, this was a change that had been successfully assimilated.³⁸ The views of defence lawyers were sometimes more equivocal.³⁹ Both sides agreed that there was room for improvement in terms of agreeing evidence in advance of trials;
- *technological changes*: technological advances present opportunities to improve the criminal justice system, but they also pose challenges and can impose new obstacles, for instance where – as is increasingly the case – a trial turns on digital evidence, but one system is not compatible with another.⁴⁰

Evidence from stakeholders

27. The Committee’s call for evidence invited views as to whether the COPFS had the resources it needs to carry out its prosecutorial role effectively.
28. Those accustomed to working at a more strategic level with the COPFS, for instance the Scottish Courts and Tribunals Service (SCTS),⁴¹ the Association of Police Superintendents Scotland,⁴² and senior officers at Police Scotland,⁴³ said that they worked effectively and well with the COPFS. They did not indicate that the budget squeeze had much impacted on that high-level work.
29. This was not the majority view. Most criminal justice stakeholders – bodies or individuals accustomed to working at the frontline of the system and in everyday contact with the COPFS – agreed that a lack of resources had had a detrimental effect on the COPFS’s performance. They included representatives of the criminal bar (both solicitors and advocates), criminal justice social workers, the Scottish Police Federation and Victim Support Scotland. Most groups accepted that the COPFS was at least coping in its core role – steering high volumes of criminal cases daily through the system to a generally appropriate resolution. But they also considered that the effects of depleted resources had become increasingly plain to see in the COPFS’s performance and were creating some

systemic risks in the handling of prosecutions. Their view is perhaps summed up in the Edinburgh Bar Association's overall impression of the COPFS as—



an organisation struggling manfully in difficult circumstances. The problem that displays itself in every department is under-staffing.”⁴⁴

30. The following is a snapshot of some of the symptoms of this perceived under-resourcing that these witnesses said were being played out daily in courtrooms and offices across Scotland. Some of them are discussed at more length at appropriate points later in the report—
 - *communications with other criminal justice stakeholders*: this was a key concern. Witnesses spoke to a general perception of a COPFS that did not have much time to talk. Its communications with other stakeholders could appear rushed or perfunctory, or sometimes not take place at all.⁴⁵ On visits, defence agents said that the once everyday practice of being able to discuss cases with the local fiscal had now become uncommon. Social workers and third sector organisations working with accused people and offenders made similar comments.⁴⁶ One bar association told the Committee that it was now accepted as standard practice for the first letter to the COPFS about a case to be ignored.⁴⁷ Witnesses said that a lack of communication could have real consequences down the line: it might lead to an accused person being remanded where earlier information-sharing might have allowed them to be released;⁴⁸ it might lead to a police warrant not being granted timeously;⁴⁹ or it might lead to a case proceeding to trial rather than being settled with an early plea because a crucial conversation between prosecution and defence had not taken place;⁵⁰
 - *communications and relationship-building with victims and witnesses*: similar views were expressed. It appeared to some people with recent experience as prosecution witnesses (including victims of crime) that COPFS staff simply did not have time to build working relationships with them prior to a trial;⁵¹
 - *rationalisation and “efficiencies”*: some of the issues outlined above were seen as symptomatic of efforts by COPFS management to cut costs, and perhaps corners, in response to budgetary pressures. For instance, difficulties reported in finding a local fiscal to talk to were seen as one aspect of a general trend towards a more centralised prosecution service.⁵² This centralisation was also perceived as having led to a lowering of morale and job satisfaction in local fiscals' offices.⁵³ Some witnesses also asserted that the COPFS had largely abandoned its policy of taking statements prior to trial from prosecution witnesses, as a cost-cutting measure.⁵⁴ The COPFS accepted that some of these changes had occurred but insisted that the main driver tended to be good practice and a desire to attain greater consistency rather than efficiency savings;⁵⁵

- *overwork and workplace stress*: the Committee heard that it was commonplace for prosecutors to have to work late or at weekends, and to take work home. Witnesses from other professions told the Committee that being a prosecutor appeared to have become an increasingly difficult job.⁵⁶ They said they sympathised with prosecutors because of the pressures they were under. The Sheriffs Association commented on anecdotal views from its members that the root cause of many adjournments and delays was an insufficiency of COPFS resources to cope with the volume of casework it had to process;⁵⁷
- *decision-making*: COPFS staff are decision-makers at various points of the prosecution journey: whether or not to prosecute, whether to oppose bail, whether to accept a plea bargain, and so on. Stakeholders said that if COPFS staff were stressed, did not have time to prepare or consult, and had too little thinking time generally, it was inevitable that they would sometimes get decisions wrong.⁵⁸

Staffing issues – union views

31. The evidence of the two main unions represented in the COPFS, the FDA, representing procurators fiscal, and the PCS, mainly representing administrative staff, focussed on the welfare of staff and on work pressures. Both conveyed a similar message, summarised in remarks of the FDA that—

” ... the COPFS is continuing to meet targets even in this challenging environment. However, FDA is concerned that this is being achieved at a high personal cost to our members.⁵⁹

32. The number of prosecutors at the COPFS had been in decline since 2009-10, when it stood at an all-time high of 558, although evidence received whilst the inquiry was running indicated a modest reversal of that trend. As of December 2016, there were 533 full-time equivalent prosecutors, with some two thirds of these (354 full-time equivalents) in front line posts, the remaining third being mainly in management roles.⁶⁰

Workload and preparation time

33. Being busy with casework has always been an intrinsic part of the prosecutor's working life. It is expected of fiscals and, to a lesser extent, of deputes working in the High Court, that they juggle several cases at the same time in preparation for their being called to trial, whether or not the case actually reaches that point. (The vast majority will not.⁶¹) This will be clear to anyone who has viewed proceedings in a sheriff or JP court on a typically busy day, where fiscals can be seen working steadily through bundles of files (carried in to the courtroom on trolleys as the Committee observed on its December visit to Edinburgh Sheriff Court), whilst defence agents come and go from the table as their, typically, one or two cases for the day are called.

34. However, the view expressed by a number of witnesses during the inquiry was that recent years had been particularly tough for the service and that the burden had increased. There was a perception that it had become close to impossible for fiscals to adequately prepare all their allocated cases within their contacted hours.⁶² The FDA and PCS both agreed. Fiona Eadie of the FDA told the Committee that—

” I can confidently state that, time and again, our members go to court without having had adequate time to prepare their cases.⁶³

35. Stephen Murray of the PCS referred to a “lack of resilience” in the staffing of the COPFS—

” I see at first hand every day deputies being given cases the morning the trial starts, and they have to read that material and prepare themselves before they go into court ... I think that the public would be alarmed if they knew that that was happening. It is through no fault of the deputies; they are trying their best to go into court and to see justice done, but with very limited resources.⁶⁴

36. The unions also cited evidence from recent COPFS statistics and staff surveys to average levels of absence and long-term sick leave (10.2 days per annum against 7.2 across the civil service.)⁶⁵ Recent surveys had also recorded higher than average numbers of COPFS staff, again compared to the rest of the civil service, expressing the view that they did not have an acceptable work-life balance or that they did not envisage remaining in the service in future. Rachael Weir of the FDA referred to the high expectations placed on the COPFS as an organisation—

” That expectation weighs on our members when they find themselves struggling to deliver to the standard that is expected of them. Some of that is borne out by the survey results ... in particular it is borne out by the sickness levels.⁶⁶

Temporary promotions, short-term contracts and trainees

37. The COPFS itself acknowledges an issue with an above-average number of long-term temporary promotions in the service. Recent years have also seen an increase in the number of legal and administrative staff at the COPFS on short-term contracts (in the case of fiscals, usually two years).⁶⁷ The Committee understands the COPFS’s position at the time to be that this was a necessary response to the drop in funding that followed the 2008 crash, requiring fewer staff but a more flexible staff profile.⁶⁸
38. In private testimony, two former COPFS employees during the relevant period referred to a perception amongst staff at the time that there was a deliberate policy of seeking to break fiscals’ length of service. The result, they said, was that experienced, motivated and trained-up staff were being effectively pushed out of the service.⁶⁹ The Committee also notes the potential for short-term contracts to change employees’ approach to their job; if fiscals’ jobs are up for

renewal every two years, they may become more risk-averse and less likely to exercise a robust challenge function, particularly in relation to decisions of senior colleagues.⁷⁰

39. Both FDA and PCS witnesses said they had significant concern about the number of legal and administrative staff on fixed-term contracts.⁷¹ Stephen Murray of the PCS told the Committee that in his view there was a direct correlation between fixed-term contracts and high staff turnover (leading in turn to an “almost constant” training programme), as well as a general lowering in the quality of applications. He argued that the COPFS had lost some of its prestige as an employer because of the preponderance of fixed-term contracts.⁷²
40. For many years, the COPFS has taken on one of the largest cohorts of trainees of any employer of solicitors, whether in the public or private sector. Many have stayed on and had long and sometimes distinguished careers in the service. The Committee was told that, in recent years, the COPFS had drastically reduced the numbers of trainees it retained; in at least one year retaining none at all. The reason for this had been that the COPFS did not have the resources to keep trainees on, but this thinking was criticised as uneconomical in the longer term, as the COPFS was expending resources to bring people up to a good professional standard and to be effective courtroom practitioners, and then releasing them.⁷³
41. On visits, the Committee noted views that there was an increasing reliance on trainees to prosecute cases. It was argued that the criminal justice system was not always well served by putting trainees in charge of cases: they may not have the experience or authorisation to take the key decisions required during the process. FDA witnesses gave balanced evidence on this matter, noting that it has always been one of the COPFS’s selling points that it gave trainees extensive courtroom experience, including experience in leading prosecutions, but acknowledging a perception that trainees were now being “relied on very heavily” as “court fodder”. They said this was not appropriate because it did not allow adequate time for training.⁷⁴

COPFS response

42. The unions’ evidence on staffing issues was partially accepted by the COPFS leadership when they gave evidence.⁷⁵ In effect, they acknowledged that recent years had not been easy for COPFS staff, but that they had coped under pressure. The Lord Advocate took the opportunity provided by the inquiry to underline his appreciation for staff, telling the Committee that he had “absolute trust and confidence in the judgment of those who prosecute on my behalf up and down the country.”⁷⁶
43. The Committee asked the Crown Agent how many cases, as of mid-January 2017, awaited marking – the initial sifting stage in the prosecution process – and whether there was a backlog. The Crown Agent confirmed that around 16,000

cases awaited marking, but said that this did not, in his view, amount to a “backlog” as the number was not particularly out of the ordinary and that the COPFS remained on track to meet its performance indicator of marking over 75% of reported cases within 4 weeks.⁷⁷

44. The Lord Advocate and Crown Agent both asked the Committee to note indications that, in relation to staffing issues, the organisation may be turning the corner. The Lord Advocate drew the Committee’s attention to the COPFS’s most recent staff survey, showing more positive results on issues such as morale, workload, and desire to remain in the COPFS than in previous years. There was an increase of 15% in staff reporting that they had an acceptable workload and 11% in those who said they had an acceptable work-life balance, whilst 60% of staff responding to the survey indicated that they wished to remain there for at least the next three years. These changes had brought the COPFS closer to the civil service average, and in some cases well above it. The numbers, the Lord Advocate said, were now “moving in the right direction”.⁷⁸
45. The Crown Agent referred to ongoing work (the “Fair Futures” programme) to map staff views on the future direction of the COPFS based on a major internal consultation.⁷⁹ This work was now being carried forward in four separate workstreams addressing issues such as work-life balance and performance management. He acknowledged that too many staff were on short-term contracts and informed the Committee that the COPFS was now intent on increasing the proportion of staff on permanent contracts, starting with fiscals. He described this work as a “continuing journey”.⁸⁰
46. The Crown Agent also told the Committee that the current figure of over 100 staff in temporary appointments was “too high” and that work was underway to address this, by confirming appointments as permanent, where possible.⁸¹ In relation to trainees, the Lord Advocate said that he was personally committed to a strong traineeship programme, based in large part on giving trainees advocacy experience in courts.⁸² The Crown Agent said that the COPFS’s record on retaining trainees had improved, and that it was on schedule to retain around 20 or 21 out of the current cohort of year 2 trainees.⁸³

2017-18 budget and effect on staffing

47. The COPFS budget for the 2017-18 financial year is £111.1m, a real terms reduction of £1.5 million, taking into account the Crown Office’s evidence that a small sum in the Justice budget, specifically for domestic abuse prosecutions, is earmarked for transfer during this financial year.⁸⁴ The Crown Agent told the Committee that he expected around half of this reduction to be met through savings in the estates budget and through renewing soon-to-expire contracts on more favourable terms. The remaining £750,000 saving would have to be met out of the staff budget. He said he anticipated around 30 jobs being lost, none of them through compulsory redundancy, and that he would seek to protect front-line prosecution jobs, with losses likely to come from “other grades”.⁸⁵

48. On 15 November 2016, before proposals for the 2017-18 budget were published, Fiona Eadie of the FDA had told the Committee that—

” I fully expect our senior manager to give evidence to the Parliament and say that he can probably just about manage to deliver the same service again with the same money next year. I make no criticism of that: his job is to manage the department within the budget that he is given. However, if the committee wants to see the sorts of improvements that we have spoken about today and the standard of service that we all want to deliver and that the people of Scotland expect, additional resources are required.⁸⁶

49. In a letter to the Committee on 15 December, just after the budget proposals were published, the Crown Agent said that—

” COPFS is committed to maintaining service improvement while absorbing the cost pressures arising in 2017-18. Our room for manoeuvre is, however, more limited than before.⁸⁷

50. In oral evidence to the Committee, he acknowledged that “things are becoming increasingly challenging” but said that “there are still choices that can be made”. In relation to the anticipated loss of 30 staff, he said that his aim was to maintain existing levels of front-line legal staff and let go of posts elsewhere.⁸⁸ The Lord Advocate described the 2017-18 budget proposals as a “sound settlement” for the COPFS and one “that enables me in the forthcoming financial year to fulfil my public responsibilities” in relation to the effective prosecution of crime.⁸⁹

Latest developments: COPFS corporate strategies

51. On 8 February the Crown Agent wrote to the Committee notifying the publication of four COPFS corporate strategies: a digital strategy; an estates strategy; a financial strategy; and a workforce planning strategy.⁹⁰ These have been drawn up partly in response to recommendations from the Auditor General, made over several years, that the COPFS would benefit from more long-term financial planning.⁹¹ The strategies were published too late for formal consideration as part of this inquiry, but the Committee notes that the financial strategy envisages the COPFS shedding between 105 and 290 staff over the next five years. This is on the basis of an assumption of a £15 million real-terms reduction in overall funding during that period. Other savings are anticipated being made from a reduction in the number of COPFS offices (in this connection, the Committee notes from the estates strategy that 6 of 51 offices are currently unstaffed) and general rationalisation of office space, and from realising efficiencies as a result of fully implementing the Justice Digital Strategy (which is discussed immediately below).

Wider reform

52. The Lord Advocate asked the Committee not to consider the issue of funding in isolation from the need for wider “transformational change”⁹² in the criminal justice system, referring to—

” the very real potential for changes in the justice system across the piece, of which the Crown Office is only part. All that has implications for resourcing. It is not correct to say that the only way to solve a problem is simply to apply more resources to it.”⁹³

53. The Crown Agent agreed and suggested that there was a need for a wider debate as to why civilian witnesses were not more engaged with the trial process, noting that 80% of Crown motions to adjourn are caused by witness non-attendance.⁹⁴
54. Very similar views were expressed by the Cabinet Secretary in his evidence session with the Committee. He referred to the need for a “whole system approach” to address inefficiencies in the criminal justice system, driven primarily by the Justice Board.⁹⁵ The Board was set up in 2011 in order to encourage effective partnership working and planning across the criminal justice system, and in particular to deliver the outcomes of the Scottish Government’s Justice Strategy. The Board comprises the heads of all the main public agencies with responsibilities for delivering criminal justice, including the COPFS, Police Scotland and the SCTS, and representatives of all three bodies indicated that they regarded the Board as a key body in the delivery of systemic change.⁹⁶
55. Current projects that Justice Board members envisage as having the potential to create significant efficiencies in the criminal justice system include—
- the SCTS-led Evidence and Procedure Review, being carried forward following a 2015 report⁹⁷ from Lord Carloway, the current Lord Justice General. The report called for radical reform in relation to the capturing and presentation of evidence in criminal trials, and in particular for the elimination of the need for evidence in court from children and vulnerable witnesses where possible;
 - the Justice Digital Strategy; an ongoing project to fully digitise the civil and criminal justice systems.⁹⁸ Distinct workstreams include the creation of a “digital vault” for the storage of data relevant to particular cases.
56. Supplementary written evidence from the COPFS provided near the end of the inquiry, in response to other evidence received, commented that—

” When the process is looked at as a whole, there is still significant scope to improve the way in which the criminal justice system operates. There is significant scope for redesigning the system, so that resources are focused on resolving cases at the earliest opportunity and inconvenience to victims, witnesses and accused persons minimised. This is a task for all those involved

in the work of the criminal courts. It is a challenging task but one which offers the opportunity to secure transformational improvement through the work of the Justice Board, and in particular the Evidence and Procedure Review led by SCTS which is fully supported by COPFS.⁹⁹

57. The submission added that another potential breakthrough lay in finding ways to get more cases to resolve earlier—



... prosecutors work in a court system that requires all cases in which a plea of not guilty is tendered to be prepared as if they are going to trial, even though the vast majority of contested cases will resolve in due course without the requirement for a trial. This affects the victims and witnesses in all such cases, and the prosecution service which must prepare the cases for trial. Devoting preparation time to cases which are not ultimately contested prevents COPFS and others focusing greater resource on preparing those cases which are likely to be contested.¹⁰⁰

58. The discussion on the efficiency of the prosecution system is continued in the next section of this report.

59. The COPFS, in common with agencies across the public sector, has faced significant challenges as a result of a prolonged period of flat-lining budgets. This looks set to continue into 2017-18. The Committee notes the Lord Advocate's remarks that he considered his 2017-18 budget to be a "sound settlement" that will enable him to continue to provide a fundamentally effective prosecution service.
60. For the most part, the COPFS has coped in this tougher financial environment as well as can be expected, and its frontline staff deserve credit and recognition for their resilience under sometimes difficult circumstances. It would be unreasonable for the COPFS to continue to rely on the resilience of its staff indefinitely. The Committee considers that change is necessary before the risks that are undoubtedly embedded in the prosecution system, as presently constituted, begin to crystallise.
61. The Committee agrees with evidence from the COPFS and the Cabinet Secretary for Justice that more efficient ways need to be found to manage the whole prosecution process. Whilst the COPFS is the single most important organisation involved in managing the prosecution process, it cannot achieve this reform on its own. The Committee notes that it is expected that change will be primarily driven by the cross-agency Justice Board, on which the COPFS is represented, and expects the Lord Advocate and Cabinet Secretary to provide the necessary backing for the Board as it proceeds in implementing key elements of the Justice Strategy
62. The Lord Advocate and Crown Agent have acknowledged in evidence that there is a need to address staffing concerns dating back several years.

Above average numbers of staff on short-term contracts, on sick leave, or in long-term temporary promotions are danger signs. The Committee is pleased the current leadership appears to recognise this, to be listening to staff, and to be looking for ways to deal with these issues. The Committee will continue to maintain a watching brief on this issue and requests an update on staffing matters from the COPFS when it responds to this report.

63. In relations to matters such as job satisfaction and work-life balance, returns from staff surveys in recent years have been concerning. The Committee notes some evidence that, in these areas, the organisation might now be making progress. The Committee also notes evidence and public statements from the Lord Advocate that he has confidence in the judgment of his prosecutors and trusts them to take decisions in his name. However, it is still very early days and, in this context, indications that the COPFS may have to shed around 30 staff in 2017-18 to deal with real-terms budget cuts are worrying. It is difficult to see, given the current pressures staff are under, how further losses are sustainable. The Committee seeks clarification from the COPFS on the operational rationale for job losses and where they will fall.
64. The Committee also warns the COPFS against an over-reliance on digital solutions to deliver greater efficiencies.

Efficiency and effectiveness of the prosecution service

65. The Committee's call for written evidence invited 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.

66. In asking about efficiency, the Committee was seeking views primarily on whether the overall prosecution process appeared to avoid repetition or delay (and if not, whether it mitigated them) and on whether the COPFS appeared to make effective use of its resources in the course of the process. In asking about effectiveness, the Committee wished to elicit views on how well the COPFS actually dealt with and, if they went to trial, prosecuted crimes: were cases being handled in a rigorous, thorough and fair manner?

67. The call for evidence continued—

” 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 mind the differing needs of people across Scotland; urban and rural communities, economically disadvantaged people, vulnerable groups, etc)?

68. Stakeholders were also asked—

” ... 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”,

69. As any organisation that communicates effectively with its key stakeholders is likely to be more effective (and efficient) in general, some evidence provided in response to this question is also considered below.

70. There are some preliminary matters to be outlined before reviewing the evidence, in order to help put that evidence in context.

Criminal prosecutions: an outline

71. In essence, crimes in Scotland are prosecuted as follows—

- The police or another reporting organisation¹⁰¹ report a crime to the COPFS. In 2015-16, the COPFS received some 225,500 reports;¹⁰²

- The COPFS receives the report, which is allocated to a prosecutor for the process known as “marking”. There are three main outcomes—
 - The fiscal may mark the case for no proceedings. This may be because it appears that no crime was in fact committed or that there is insufficient evidence of crime. Or the Crown may determine it is otherwise not in the public interest to proceed. In 2015-16, no action was taken in around 26,400 (12%) of reported cases;
 - The fiscal may decide that an alternative to (or “diversion from”) prosecution would be the most appropriate way to deal with the case. In 2015-16, around 44,100 cases were marked for fixed penalties or fiscal fines, 13,200 for warnings, and 13,500 for diversions of other types; for instance a social work programme intended to address the offending behaviour;
 - The fiscal may accept the charge(s) set out in the police report and/or amend any police charge to what appears a more appropriate one (eg substitute theft for embezzlement), and mark the case for prosecution. In 2015-16, proceedings against some 116,800 people were instituted;
- If the case is marked for prosecution, what happens next will depend on whether the crime is being prosecuted under solemn or summary procedure. However both procedures include: opportunities for an accused person to plead guilty at an early stage; pre-trial hearings to determine the state of preparedness of both sides; and the trial itself, which may take place over several dates.

72. In 2015-16, 59% of convictions were in the sheriff court under summary procedure, 35% in the JP court, 5% in the sheriff court under solemn procedure, and just 0.6% in the High Court.¹⁰³

Early settlement *versus* churn

73. In any prosecution, there is the prospect of the accused pleading early, in some cases aided by a plea bargain between the prosecution and defence. This avoids all the steps in the process having to be gone through. The vast majority of cases marked for prosecution do not, in the end, complete the trial process. In 2015-16, 43,000 of 52,000 cases set down for trial did not proceed,¹⁰⁴ and of those that did, many would have settled before the court was asked to reach a verdict. It is often the disclosure of key prosecution evidence to the defence that is the catalyst for a plea in advance of trial. In other words, a system that incentivises the early production and sharing of evidence is likely to be more efficient.¹⁰⁵

74. Conversely, there is also the prospect of “churn”, defined by Audit Scotland as—

” ...”appearances in court that have to be repeated due to problems with the (1) correct citation and availability of witnesses, (2) readiness of the prosecution and the defence, (3) availability of court time”¹⁰⁶

75. A degree of churn is an unavoidable fact of life in the criminal justice system, arising from what the Crown Agent referred to as the choreography¹⁰⁷ of a trial; the alignment of various, sometimes complex logistical, practical and procedural factors. This includes, as much as is possible, managing the risk of key witnesses not attending. On the other hand, churn is frustrating for stakeholders, wastes time and resources, lowers public confidence in the judicial system, and risks alienating those members of the public – victims, witnesses and jurors – on whose involvement the system depends. Everyone agrees it should be minimised as much as possible.

The COPFS’s performance in a wider context

76. A 2015 Audit Scotland report (*Efficiency of Prosecuting Criminal Cases through the Sheriff Courts*¹⁰⁸) that sought to measure the efficiency of criminal prosecutions in the sheriff courts, identified the COPFS as one of three key partners in the prosecution process, alongside Police Scotland and the Scottish Courts and Tribunals Service. As outlined earlier, they sit together on the Justice Board, working with other partners to implement the Scottish Government’s Justice Strategy. One of the key messages of Audit Scotland’s report was that the process is not wholly within the control of the COPFS. If there are inefficiencies they are likely to require what the report called an “integrated system” approach to resolve them, involving other stakeholders.
77. Evidence to this inquiry has underlined that these other stakeholders comprise not only other members of the Board, but defence solicitors and advocates, the criminal justice social work profession, third sector organisations, and the judiciary, amongst others. The Committee has already noted that, whilst in evidence the SCTS and Police Scotland saw their working relationship with the COPFS in mainly positive terms, other organisations (those not on the Board) had more mixed views. In his evidence to the Committee, Eric McQueen, Chief Executive of the SCTS confirmed that there were no plans to widen the Board’s membership to include non-public sector bodies, but said that the Board did consult other criminal justice stakeholders.¹⁰⁹ The Cabinet Secretary said that in his view it was not appropriate for non-public bodies to sit on the Board but that it was appropriate for stakeholders such as defence agents to be involved in its work and to be consulted.¹¹⁰
78. The following is a non-exhaustive list of issues which the Committee was made aware of that have the potential to disrupt a prosecution but which are not within the control of the COPFS, or are not wholly within its control—
- a suspect intimidating witnesses before a trial. In some cases, this could be traced back to a decision to liberate the suspect before trial rather than detaining them. (It is the police who take this decision and not the COPFS);

- an IT system that is not compatible with the COPFS's system;¹¹¹
- outdated and inappropriate court facilities that may discourage witnesses from giving their best evidence, or in extreme cases from giving evidence at all;¹¹²
- serious delay in the Crown obtaining a key piece of evidence from another agency (for instance, a forensic report);¹¹³
- conduct of the defence: the Committee is aware of views that the current criminal legal aid system may create incentives and disincentives for the defence to act in ways that may not be efficient or in the best interests of justice. It was not possible to explore this issue in detail during the inquiry. An independent review of legal aid has recently been announced and the Committee expects that it may wish to consider this matter.¹¹⁴ The non-agreement of uncontentious evidence by the defence in advance of a trial was another issue raised during the inquiry, although defence agents told the Committee that fiscals and agents did not always agree on what "uncontentious" evidence was;¹¹⁵
- lack of court time, caused for instance by an insufficiency of judges to hear cases: statistics indicate that this is a relatively uncommon reason for cases to be adjourned, but it does happen;¹¹⁶
- judicial case management (or its absence): a view the Committee heard from practitioners on visits was that judges are largely at the mercy of those prosecuting and defending cases. They cannot turn a poorly prepared case around. Conversely, the Committee heard of a pilot project run under the authority of the Lord Justice General to streamline solemn procedure, in large part through more active judicial case management.¹¹⁷ It was not possible to consider this issue in detail during the inquiry, but the Committee noted views that the pilot had led to more cases either being settled or proceeding to trial earlier.

79. The subject of recent sheriff court closures arose in evidence. It was the view of representatives of the Edinburgh and Aberdeen bar associations amongst others that the closure of some courts had led to a marked and noticeable increase in the amount of work that neighbouring courts had to take on, without the COPFS in those courts noticeably receiving additional resources.¹¹⁸ However, any suggestion that the programme of court closures had caused additional backlogs or increased churn was disputed by the Cabinet Secretary for Justice and the SCTS as being not evidence-based.¹¹⁹ They said that, if anything, recent statistics showed that there had been an increase in the efficiency of those courts that had absorbed most of the work of the closed courts.

Measuring efficiency and effectiveness

80. There are two main ways of seeking to measure the effectiveness or efficiency of the prosecution service—

- by reference to statistics and other data, for instance on: conviction rates; percentage of abandoned prosecutions; average length of case; or average number of adjournments per case, with the potential to note regional or other variations. Some such data are available in public sources. Others may require commissioned research;
- by reference to the views and opinions of informed stakeholders as to how well the COPFS performs in its role as a prosecutor. Some stakeholders told the Committee that they actively gather their clients' views, and that the evidence they provided was part-based on these surveys.¹²⁰

81. Over the course of the inquiry, it was the COPFS itself that provided the bulk of statistical evidence to the inquiry. The 2015 Audit Scotland report, whilst not formal evidence to the inquiry, also provided some useful analysis on the efficiency of the criminal justice system in the sheriff courts, based on a predominantly data-driven approach. Evidence from most other organisations or individuals fell into the second category. Both the COPFS and the Cabinet Secretary for Justice, in their evidence to the Committee, quite properly noted the importance of hard data and argued that, where anecdotal evidence appears to be unsupported by statistics, this calls that evidence into question.¹²¹ In other words, perceptions may not match reality.
82. Statistics do have some limits, however. There is the fundamental difficulty of benchmarking the COPFS's performance when there is no other prosecution service against which it can be directly compared without major caveats. Additionally, on key questions, such as whether prosecutors are using their powers to divert cases from prosecution appropriately or on whether cases that go to trial are usually reaching the "right" verdict, statistics appear unlikely to provide a clear answer. In this connection, the Committee notes that the 2015 Audit Scotland report on sheriff court cases understandably focussed on statistically measurable aspects of the prosecution system rather than qualitative questions. Even then, it was guarded in its conclusions as to what specific aspects of the system were inefficient, and how best to address these. One of its main conclusions was that more data needed to be collected.
83. Consideration of conviction rates illustrates some of the drawbacks of a predominantly data-driven analysis of the COPFS. High conviction rates have been referred to more than once during the inquiry as evidence that the COPFS is prosecuting cases appropriately, rigorously and effectively. (In 2015-16, 86% of cases that went to trial ended in a conviction.¹²²) On the other hand, questions would be raised if the COPFS's conviction rate was close to 100%; it would look either as if the COPFS was only prosecuting the most winnable cases or that the system was rigged. Conviction rates for serious sexual offences such as rape remain low, yet some of the more positive evidence from stakeholders about the COPFS's effectiveness as a prosecutor related to its record in prosecuting serious sexual offences, which was seen to have improved.¹²³ In short, if there is

an optimum conviction rate that the COPFS should be pursuing, it is not clear what it should be.

84. In view of these considerations, the Committee has sought to take a balanced approach; recognising the strength and validity of authoritative data, but also taking account of more qualitative evidence to help come to a rounded view, and build up a composite picture of the strengths and weaknesses of the current system. The Committee considers that, when it comes to assessing the performance of the COPFS, statistics only take us so far and that perceptions matter too. The Lord Advocate appeared to acknowledge this when, in the closing evidence session of the inquiry, he told the Committee that he had been concerned by some of the concerns raised in previous evidence and that, leaving aside what the data might indicate—



... if important stakeholders have a poor impression of the service, that is plainly a matter of concern and something that the service ought to address.¹²⁴

Efficiency of current prosecution system

The Committee has sought to reflect in the evidence on two questions: first whether the current system, allowing for the inevitability of some churn, could be described as optimally efficient; and second, if not, what positive measures could be taken to address this.

85. Audit Scotland's 2015 report on sheriff court criminal cases found clear evidence of inefficiency in the system, but was guarded in seeking to scope the exact scale of it, and in drawing clear conclusions as to its principal drivers and how best to address these. This was because of the overall complexity of the system, in which the COPFS was only one of a number of actors, and in part because Audit Scotland considered it did not have the data it needed to reach firm conclusions. The presence of marked regional variation in the average efficiency of sheriff courts was one of the main findings of the report, but again the report was cautious in extrapolating wider lessons from this. Its main recommendations related to—
- improved joint working between the COPFS and relevant public agencies, building on the work of the Justice Board, but seeking to apply it more consistently at local level;
 - supplementing the single relevant performance indicator (proportion of cases completed within 26 weeks, which Audit Scotland considered to be a weak indicator in any case) with others, in order to help build a more comprehensive picture of pressure points within the system, and to cost inefficiencies more accurately.
86. Amongst the report's key findings were that about half of summary cases did not proceed as planned in sheriff courts in 2014-15, and that, over a four-year period, the proportion of cases not proceeding as planned had grown. The report

concluded that the cost of overall delay and postponement in sheriff court cases in 2014-15 was around £13.6 million per annum, of which the cost of churn was “up to £10 million”; ie about ten percent of the total estimated cost of running intermediate and trial diets. It caveated that it was an estimate based on limited data. As the Committee understands it, this is the cost to the justice system itself: it would not include the economic costs incurred by a witness (for instance, an NHS doctor having to reschedule appointments because of repeatedly postponed court hearings).¹²⁵ Even allowing for Audit Scotland’s caveats, the Committee expects most people to agree that this finding is concerning, and points to an unacceptable level of churn within the system.

Evidence from stakeholders

87. Audit Scotland’s central finding; that there were avoidable inefficiencies in the current system, was supported by most evidence the Committee gathered over the course of the inquiry. Most of this primarily related to summary trials, which constitute the vast majority of criminal business, although a specific concern concerning solemn procedure was raised in relation to so-called floating trials at the High Court (trials which might start on any day of a given week) and the level of inconvenience that their scheduling could cause witnesses.¹²⁶ Stakeholders exhibited a degree of sympathy for the difficulties the COPFS faced in making trials run efficiently within the current system and against a backdrop of tight resources. As noted earlier, many criminal justice stakeholders thought the key issue was that the COPFS did not have enough staff and that most other difficulties flowed from this. However, there was also considerable frustration with the current system and, to some extent, with the COPFS’s role within it.¹²⁷
88. The proximate cause of the vast majority of churn is that far more cases are set down for prosecution than will ever actually proceed to trial – and of those cases that proceed to trial, a high proportion will be concluded without going the full distance.¹²⁸ It is therefore inevitable that there will be delays, postponements and cancellations: these are not glitches of the current prosecution system; they are features of it. The Committee has not found unpicking the reasons behind this situation to be straightforward, but some considerations have been put forward in evidence.
89. First, there is simply the inherent complexity of the prosecution process, involving the interaction of multiple public agencies, the defence the accused, and witnesses – with the sometimes unpredictable behaviour of the latter two categories an additional complication.¹²⁹ Limited public spending that requires public agencies to make difficult decisions about prioritisation of services further adds to that complexity. In its 2015 report, Audit Scotland considered that joint working by agencies at local level could be improved and standardised.
90. The Committee also notes views that sometimes it takes the setting of a trial diet to focus the minds of an accused and persuade them not to contest a case.¹³⁰ They might only decide to offer a plea of guilty just before the trial proceeds. This

is the sort of churn that could be described as unavoidable, although as the COPFS has itself noted, the earlier any prosecution evidence can be shared with the accused, the more likely it is that the accused will plead early.¹³¹

91. With thousands of cases in the system at any given time, it is necessary for these to be prioritised. This cannot be easy, but it appeared to be accepted as a fact by practitioners the Committee met on visits that setting dates for trials sometimes appeared to be more about getting cases into the system than deliberating over the right dates for them to call. In evidence, Stephen Mannifield of the Edinburgh Bar Association said it was normal for trial diets to be deliberately overloaded, with cases prioritised in an apparently “scattergun” manner.¹³² Mr Mannifield also said that it was not uncommon for judges to set date for trials despite uncertainty as to whether all witnesses had been correctly cited making it likely that the trial would be adjourned.¹³³ The Committee heard that trial diets are sometimes agreed despite the Crown being under-prepared and not, for instance, having fully disclosed all relevant evidence to the defence, which may make postponement almost inevitable.¹³⁴
92. The Committee also heard views that summary trial diets were sometimes set for no reason other than to avoid a time bar.¹³⁵ This was disputed by Eric McQueen, Chief Executive of the SCTS, who said that time bars did not apply in summary cases once they had reached the trial stage, unless the accused was in custody.¹³⁶ Subsequent written evidence from the SCTS clarified that there is a general requirement for fiscals to initiate proceedings against an accused within 6 months of the commission of a statutory offence.¹³⁷ There is no such formal requirement for common law offences. The Committee also notes Article 6(1) of the ECHR which provides that in the determination of any charge against them, everyone is entitled to a fair and public hearing within a reasonable time.
93. As to whether inefficiencies are increasing, there was a mixture of views. As noted, Audit Scotland’s 2015 report had tracked a slight decline in the efficient handling of summary cases over a four-year period. Evidence and testimony over the course of the inquiry indicated that pressures on the COPFS had increased in recent years and that this was reflected in the handling of cases.¹³⁸ More recent statistical information indicates an increase in the absolute number of adjournments in recent years although as a percentage of all court hearings, adjourned hearings declined slightly from 2014-15 to 2015-16.¹³⁹

Citation of witnesses

94. One of the most common complaints heard in evidence was that of trial witnesses having to attend hearings that did not in fact proceed.¹⁴⁰ Stakeholders’ evidence was not simply that this occurred but that efforts by the COPFS to mitigate the inconvenience it caused often appeared from their perspective, to be limited.¹⁴¹ Four forensic medical examiners separately provided written evidence to the Committee outlining their concerns.¹⁴² One wrote of being cited to attend court between five and 20 times a month, but—

- ” “after all the organisation and rearrangement to accommodate being available to attend, I actually give evidence in court only a handful of times a year. At short notice, the vast majority of cases are either adjourned or the trial does not proceed. This is disruptive to ongoing patient care, wasteful and frustrating.¹⁴³
95. Another expressed puzzlement as to why the COPFS had not yet come up with a simple way of notifying prospective witnesses, by phone, text, email or via an online service, whether a trial scheduled for a particular date was actually going ahead as the date approached.¹⁴⁴
96. The British Medical Association referred to anecdotal evidence that, faced with these frustrations, a number of clinicians were opting out of court service entirely.¹⁴⁵ Evidence in a similar vein came from professionals in other disciplines, such as the social work service and third sector organisations, as well as from a number of individuals with recent experience of the criminal justice system.¹⁴⁶
97. Calum Steele of the Scottish Police Federation linked problems in the citation of police witnesses to the issue of more radical reform of the prosecution system—
- ” ...our court system needs to work at times that are more attuned to the demands of the police service. Attempts at dealing with police witness scheduling were being trialled when I joined the service 23 years ago and I suspect that they were trialled a long time before that. There have been various iterations over the years but the problems continue unabated.¹⁴⁷
98. Concerns were raised about the quality of the citation process. The Sheriffs’ Association commented that—
- ” the Crown appears to have adopted a practice of citation of witnesses via the police. This is often mentioned in court as a reason for trials not being prepared, as police citation appears to be somewhat hit-and-miss, and often the citation has not been returned in time for the trial. We are aware that formerly the Crown had a dedicated unit of process-servers, and we would at least raise the question as to whether this might be reinstated. If witnesses are not cited, trials cannot proceed, with resulting delay and cost.¹⁴⁸

COPFS and SCTS views

99. The Crown Agent acknowledged Audit Scotland’s £10 million estimate of the likely cost of churn in his evidence to the Committee.¹⁴⁹
100. Overall, the COPFS’s evidence was to the effect that churn was an acknowledged problem in the criminal justice system that needed to be addressed, but that it could only be tackled comprehensively via the “whole system” approach outlined in the previous section.

101. The Crown Agent cited evidence that around 80% of adjournments sought by the Crown in criminal cases arise from the non-attendance of an essential witness.¹⁵⁰ Clearly, this is not generally a matter the COPFS can control, although (having regard to some of the testimony received during this inquiry) it appears likely that there may be instances where the manner in which the case is conducted will have increased the likelihood of witnesses opting out of the trial process.

102. Referring to the issue of witness citations, and to the evidence of the medical examiners, the Lord Advocate expressed “sympathy with the position in which they find themselves”. He said it pointed to the need to think more creatively about the system as a whole.¹⁵¹ The Lord Advocate set out the scale of the overall challenge of reducing unnecessary witness citations, referring to information provided by the SCTS—

” At the moment, 52,000 trials are set down in a given year and, of those, 9,000 run. Every time that a trial is set down, all the witnesses have to be cited to attend. The court service’s document identifies that approximately 460,000 witnesses are cited to summary trials. If we set down only the 9,000 trials that actually run, we would be able to save 368,000 witness citations. We have to be clear that this is not a prediction by the court service, but it indicates the scope if we can get the procedures right and not fix trials in cases that are not likely to run and the scope within the system for effecting a transformational change.¹⁵²

103. Evidence provided by the COPFS during the Committee’s 2017-18 budget scrutiny indicated that the cost to the COPFS of obtaining expert and specialist witnesses stood at £602,000 in 2015-16.¹⁵³

104. Eric McQueen, SCTS chief executive, also accepted that the manner in which prosecutions were carried out required an overhaul. Quoting the Lord President, he described the current system as “Victorian”, referring in particular to the “antiquated” way of bringing forward cases under the system, most of which would not proceed.¹⁵⁴ However, he disputed that the system had become any more inefficient, remarking that “I do not think that the situation has got worse at all”. Inefficiencies identified during the inquiry process he told us—

” had had been a feature of the justice system for many years” ... There has been a marginal improvements in some areas in different years, but we are saying now that we need a fundamentally different way to process business¹⁵⁵

105. “Churn” - adjournment and delay of cases scheduled for trial – is one of the main sources of frustration for anyone having to engage with the prosecution process. The Committee accepts that a degree of churn is inevitable and unavoidable, but evidence received over the inquiry indicates that it remains unacceptably high.

106. The Committee accepts that the problem of delay and inefficiency in the prosecution process cannot be solved by the COPFS acting on its own. The Committee also accepts that churn is a part-consequence of the COPFS's limited staffing resources, but calls on the COPFS to find methods of mitigating it. For instance, it should be within the capacity of the COPFS to develop more efficient and effective means of notifying those whose attendance is no longer required at a trial. The Committee asks the COPFS and the Scottish Government to take this forward within the Justice Digital Strategy.
107. The Committee notes evidence that 80% of Crown motions to adjourn arise because of the non-attendance of witnesses. Giving evidence in a trial is a civic duty and failure to do so can be deemed a contempt of court. The Committee accepts that there can be understandable reasons why witnesses do not attend a hearing, but seeks clarification from COPFS and Scottish Government as to: what measures are in place to encourage and, if necessary, ensure witness attendance; the extent to which these measures are being used; and whether alternative approaches are being considered over and above whatever may emerge in due course from the Evidence and Procedure Review.
108. No blame can be attached to witnesses for non-attendance when they have not in fact been cited to attend court. The Committee is concerned by evidence that the process is sometimes unreliable. The Committee asks the Scottish Government, COPFS and SCTS whether it accepts this evidence and, if so, what measures are being considered to address this, including for instance, the Sheriffs' Association suggestion of a dedicated COPFS unit to issue citations.

Making the prosecution system work better

109. There is consensus that the system needs to change. Various proposals were put forward by stakeholders in evidence. Reference was made earlier to two current Scottish Government initiatives:

- the Justice Digital Strategy, being taken forward by the Justice Board;
- next steps following Lord Carloway's Evidence and Procedure Review, in relation to which the SCTS is lead agency.

Digital strategy

110. The "vision" of the Digital Strategy,¹⁵⁶ published in 2014, is "to have modern, user-focused justice systems which use digital justice technology to deliver simple, fast and effective justice at best cost". It is estimated by the Scottish Government that full implementation of the strategy across the entire justice

sector (including the administrative and civil spheres) could save some £20-25 million per annum. The strategy sets out three objectives—

- *allow people and businesses to access the right information at the right time*, principally by expanding online the amount of available information about the justice system. This objective also includes a commitment, by the end of 2017, to enable victims of crime to track their case online;
- *fully digitised justice systems*;
- *make data work for us*, ie collect and use data including stakeholder feedback to develop a more efficient and responsive justice system.

111. It is the second of these objectives that appears to have most potential to unlock efficiencies in the prosecution system, particularly in tandem with complementary reforms envisaged under the Evidence and Procedure Review. It includes plans for—

- a “digital evidence vault” enabling the secure storage of all digital evidence in civil and criminal cases;
- greatly increased use of live video links to reduce the need for accused, victims and witnesses to have to come to court in all instances;
- the serving of more court documentation (eg arrest warrants) digitally; and
- disclosure by the COPFS of all evidence to defence agents electronically.

112. The strategy also envisages the police being equipped with body-worn cameras and the integration of all legacy force ICT services within Police Scotland. The Committee notes the potential impact of these objectives on the prosecution of crimes, although they are not within the direct remit of this inquiry. Scrutiny of these issues is within the current work programme of the Justice Sub-Committee on Policing.

Evidence and Procedure Review

113. Lord Carloway’s March 2015 *Evidence and Procedure Review*¹⁵⁷ concluded that the conduct of criminal trials needs to change because the process had not kept pace with entry into a digital age. The main recommendations related to—

- *child and vulnerable witnesses*: as much as possible, taking evidence from them should be removed from the courtroom setting;
- *digital evidence*: audio and video witness statements should ordinarily be admissible. This was seen as paving the way for the elimination of written witness statements, in most cases, in the future;
- *modernising criminal trial procedures*: in essence, shifting the weight of trial preparation to earlier in the process, in part through greater judicial case

management. Trial dates should only be fixed when it is clear that the case will be ready to run on the relevant date.

114. This was followed by a February 2016 “next steps” paper, setting out proposals on which the SCTS is currently working.¹⁵⁸ These are intended to build on Lord Carlaway’s three main recommendations and to align with relevant objectives in the digital strategy. The overall vision is of a more streamlined criminal justice system, with far less evidence having to be led in the courtroom.
115. As set out in the preceding section, the Lord Advocate and Crown Agent both indicated the COPFS’s readiness for reform, and said they saw real opportunities for progress, particularly in relation to the work of the Evidence and Procedure Review.¹⁵⁹ The Crown Agent said the goal was to crystallise as much evidence as possible in advance of the actual trial.¹⁶⁰ Amongst other things, this would greatly reduce the need for witnesses to attend trials – and the non-attendance of witnesses is one of the main causes of churn.
116. The Cabinet Secretary also set out his strong support for the Review. However, he referred in addition to a need for a “cultural change” on the part of all stakeholders if the full benefits of the Review were to be realised. He indicated that legislation would be required at some point to implement elements of the Review.¹⁶¹

Evidence from stakeholders

117. Evidence to the inquiry indicated broad support for reform. Michael Clancy of the Law Society of Scotland commented that—

” ...the use of digitally captured evidence – documents, photographs, CCTV recordings and so on – would improve the agreement of evidence procedures immeasurably. We must encourage the Scottish Courts and Tribunals Service to take on the challenge that the Lord President issued to have clear-sky thinking.¹⁶²

118. However, it was clear that there is a significant gap between the Scottish Government’s aspirations and the present reality. As the Committee saw on its visit to Edinburgh Sheriff Court, the COPFS’s digital systems are not fully integrated with those of other stakeholders and this can be a cause of delay. In his evidence to the Committee, the Cabinet Secretary acknowledged that there were still significant resource barriers to realising the full integration of IT services across the criminal justice sector.¹⁶³ In relation to the Digital Strategy, the Committee heard evidence that the intended outcomes are still some way off and that some targets have slipped. Evidence even called into question statements in the Strategy (under the heading “Building from a strong base”) that the following were, as of 2014, already in place—

- *“the accused and offenders can also appear from court without having to be transported from prisons:”*

- *“The Crown Office and Procurator Fiscal Service is disclosing information digitally to agents and sending text reminders to witnesses reminding them of impending trial dates”:*

119. The first may be the case for some procedural hearings, but does not yet appear to be standard practice. Steve Farrell of Community, a union representing prison wardens, gave an example of prisoners leaving prison for a hearing at 8am and returning at around 5 or 6 pm, accompanied at all times by two wardens. He described this as “a complete waste of time and resources for all stakeholders”. Mr Farrell told the Committee that it should be routine that prisoners communicate with the court by videoconference in non-trial proceedings.¹⁶⁴
120. Turning to the second statement, it is clear from evidence previously referred to in this section that it is not yet routine and standard for the COPFS to send text messages to witnesses updating them on whether their trial is running.
121. In relation to the digital exchange of evidence, a number of legal practitioners indicated a lack of confidence in the criminal justice secure mail (CJSM) system recently introduced by the COPFS to enable the sharing of sensitive case-related information online. The criticism of the CJSM system was that it was unreliable and did not always work, with documentation sometimes appearing to have not been delivered. Overall, defence practitioners lacked confidence that the system was robust.¹⁶⁵
122. The advent of a digital evidence vault was seen as a promising development but witnesses were not clear how close it was to becoming reality.¹⁶⁶ The Digital Strategy committed the Scottish Government to its introduction by the end of 2016, but that deadline has clearly been missed. Stephen Mannifield of the Edinburgh Bar Association commented that it currently appeared to be at no further than the “talking shop stage”.¹⁶⁷ When Eric McQueen, SCTS chief executive gave evidence, he said that the development of the vault had turned out to be “complex” and “clunky.” He did not indicate a revised completion date.¹⁶⁸
123. The integration of legacy ICT services at Police Scotland into a single system is another workstream that has run into difficulties, although it is not within the direct remit of this inquiry. The Justice Sub-Committee on Policing is considering this issue.
124. The written submission of the fiscals section of the FDA union commented that it appeared to its members that any benefits arising from new technology were still “months or years down the line”. Derek Ogg QC of the Faculty of Advocates said that for the Digital Strategy to bear fruit, “someone is going to have to write a cheque for an IT system that works”.¹⁶⁹
125. On visits and in formal evidence sessions, the Committee heard various suggestions as to how the present system could be improved, some of these going beyond anything currently proposed in the Strategy or Review. There were

calls for courts to sit at different times¹⁷⁰ or more often, including on Saturdays, as in some other jurisdictions.¹⁷¹ The Committee appreciates that there are cost implications to such proposals. Enabling rooms in some police stations to be deemed to be courtrooms for the purposes of holding initial hearings, in situations where the accused had been detained at the police station might have the potential to streamline the process, although the implication for the accused of making such a change would require consideration.

Evidence by video-link

126. The Committee heard proposals for purely procedural hearings such as intermediate diets to be routinely heard via video-link. The SCTS told the Committee that many witnesses, even vulnerable witnesses, want to be able to give their evidence in the courtroom, rather than by video-link.¹⁷² On the other hand, the private testimony the Committee received from three victims of crime suggests that at least some witnesses would warmly welcome the opportunity to give evidence by video-link. The Committee notes views that the disposition of witnesses is an element that judges and juries will take into account when determining a case,¹⁷³ although this is perhaps less the case with expert witnesses. There may therefore be more potential to take their evidence remotely.¹⁷⁴
127. The Cabinet Secretary for Justice told the Committee that once the Criminal Justice (Scotland) Act 2016 is fully brought into force it will enable a greater range of court hearings to be conducted by videoconferencing.¹⁷⁵ The Crown Agent told the Committee that, whilst video technology had great potential to unlock efficiencies, further debate would be necessary about propriety and good practice in relation to the use of video evidence in court.¹⁷⁶ Eric McQueen of the SCTS said that it was “probably still early days” in terms of making videoconferencing an everyday aspect of the prosecution process. Amongst other things, there are legal limitations on what types of hearing can be conducted by videoconference that would have to be addressed.¹⁷⁷

Specialist courts

128. The Committee sought views on whether the summary justice system would benefit from having more specialist courts, for instance to hear domestic abuse cases. (This is not an issue discussed in the Evidence and Procedure Review.) There are already a small number of these in the busiest sheriff courts. There was no clear consensus. Some witnesses recognised the benefits of specialisation: it might enable cases to be prosecuted more effectively.¹⁷⁸ However, the Crown Agent told the Committee that, whilst the model currently worked well in the limited areas where it was available, it may not be as effective outside larger population centres where there might not be a sufficient critical mass of cases to enable domestic abuse courts to run efficiently. It would also increase the likelihood of victims having to travel to a more distant court to have their case heard.¹⁷⁹

Latest developments: new model for summary procedure

129. The “next steps” document pertaining to the Evidence and Procedure Review does not set out a timeline for its delivery. Nor did the SCTS’s written evidence to the Committee. When SCTS officials gave evidence in person to the Committee, they were not much more forthcoming, indicating that working groups would require to be set up and that legislative changes would be required.¹⁸⁰ This suggests that completion of the programme may be years down the line. The Cabinet Secretary indicated that his current priority was to find a way of capturing the evidence of children and vulnerable people before going to trial. Only then would attention focus on other categories of witness and any changes would come in “incrementally”.¹⁸¹
130. The Committee notes the publication of the SCTS “proposition paper”: *A New Model for Summary Criminal Court Procedure*¹⁸² at the end of February 2017. This arrived too late for formal consideration as part of this inquiry, but the Committee notes that the paper builds on the work of the Evidence and Procedure Review thus far to propose a revised form of summary procedure, underpinned by digital case management. Amongst other things, it envisages practically all pre-trial procedure taking place digitally. Pre-trial hearings would take place only rarely, for the likes of contested preliminary pleas (ie pleas to have the case thrown out on a point of law before it proceeds to evidence-taking in court). The introduction to the paper acknowledges that work still requires to be done in parallel to identify legislative changes required to implement the model proposed in the paper and to identify what new technology is required to enable it. In his foreword, the SCTS chief executive explains that there will be a series of discussion events round the country to consider the proposed model. No further timeline for proposed implementation of the model is set out.
131. The Committee notes that the model set out in the proposition paper anticipates the judiciary taking on a more pro-active case management role, particularly at early stages of a prosecution, than they have traditionally been expected to perform.
132. Proposals set out in the Evidence and Procedure Review and the Justice Digital Strategy are welcome and, in some cases, long overdue. Aspects of current criminal law procedure could rightly be described as archaic. The Committee notes the potential for considerable savings to be made if far fewer witnesses are required to attend court and are able to give their evidence in other ways.
133. However, the Committee notes with concern that the timetable for implementation of some aspects of the Digital Strategy has slipped, with some targets already missed. The Committee further notes that there appears to be no public timetable for implementing the Evidence and Procedure Review.

134. The Committee asks for a progress report from the Scottish Government in respect of each main element of the Review and the Strategy, setting out the timescale, the anticipated effect on the prosecution process, and where possible, the projected cost saving in relation to each such element.
135. The Committee also asks for an update from the Scottish Government as to what legislative changes it envisages may be required to unlock the full potential of the Evidence and Procedure Review and the Justice Digital Strategy, and what plans it has in respect of these.
136. The Committee seeks further information from the Scottish Government as to how proposals to encourage increased judicial case management in the context of criminal proceedings will be progressed and what additional support, if any (eg training), it envisages the judiciary may require in this modified role.
137. The Committee also seeks further information from the Scottish Government as to whether additional funding will be required to fully implement the Digital Strategy and the Evidence and Procedure Review and, if so, whether these have been costed and what proportion of these costs fall on the COPFS.
138. Given acknowledged difficulties with the delivery of major IT projects in the public sector, the Committee is concerned that there should not be an over-reliance on information technology to drive reform in the criminal justice system.

Effectiveness of the prosecution service

139. The Cabinet Secretary told the Committee that in his view Scotland had a fundamentally good prosecution service. He said that—

” There will always be areas where the service can be improved and there will always be challenges and pressures in the system at any given time but, by and large, we are still very well served by our prosecution services and I am very confident that the Lord Advocate will continue that in the year ahead.¹⁸³

140. The Lord Advocate himself took the same view. At the conclusion of the inquiry, he was invited to respond to evidence which, it could be argued, indicated a lack of confidence in the COPFS. He queried this interpretation saying that nothing he had seen in the evidence indicated a lack of confidence—

” ... in the robustness of the fundamental work that the prosecution service does, which is effective, rigorous, fair and independent prosecution of crime.¹⁸⁴

141. Going on to cite statistics showing that more than 80 percent of prosecuted crimes result in a conviction he said that—

” The public ought to have confidence that the service is an effective, rigorous, fair and independent prosecutor.¹⁸⁵

Overall view of witnesses

142. The Committee considers the Ministers’ views to be generally consistent with the evidence of most stakeholders working alongside the COPFS in the criminal justice system. These include the police, bar associations, and those working in social work and community justice. It was also the overall view of the two former junior fiscals from whom the Committee took private testimony. Witnesses’ view of the COPFS was largely of a body of competent and often highly talented professionals doing their best under difficult circumstances. Individual prosecutors were generally respected as people of good judgment. Stephen Mannifield of the Edinburgh Bar Association told the Committee that—

” As I hope is clear from all the submissions the Committee has received, we all consider ourselves quite lucky as far as the quality of prosecutors in this country are concerned. They are a group of dedicated, intelligent lawyers at every level. It is a question of putting them in a position that allows them to do their jobs to the fullest of their abilities, more than anything else.¹⁸⁶

143. Derek Ogg QC of the Faculty of Advocates commented that Scotland was well served by “brilliant” fiscals whose skills were admired internationally. He said they needed to be more trusted by the COPFS management to get on with their jobs and exercise their own judgment.¹⁸⁷

144. Some evidence and testimony was less positive. A number of individual victims and witnesses in recent criminal cases who had shared their experiences with the Committee felt they had not been well served by the prosecution process. They were not satisfied that, in their own case, justice had been fully served. Sometimes, this was because charges had been dropped without this being explained to them, or for what appeared to be weak reasons. Sometimes prosecutors appeared to be under-prepared and unaware of key details, often because they had had little contact with the victim or prosecution witnesses before the trial commenced. Some individuals (both accused and victims) felt very badly let down by the criminal justice system. This evidence – which is further discussed in the next section – is important and concerning. It is difficult to discern how representative it is of individuals’ views as a whole, although it clearly represents at least a significant minority of views.

145. A number of concerns about specific aspects of the COPFS’s performance as a prosecutor were raised in evidence. Many of these concerns were traced back to one or more of three fundamental issues—

- a lack of resources and staff (as discussed in the previous section) or of the right sort of staff for certain specialist roles;

- inadequate communication with other stakeholders in the criminal justice process (often seen as a symptom of short staffing);
- a perception that the COPFS's move to become a more centralised organisation had had some negative consequences alongside any perceived benefits.

146. Before going on to list these specific concerns, it is important to underline that the Committee accepts and agrees with the clear balance of evidence that Scotland is well served by the COPFS as an effective prosecution service.

147. The Committee agrees with the Lord Advocate that the COPFS is, overall, “effective, rigorous, fair and independent” in the prosecution of crime. The evidence received indicates that, in general, Scotland is fundamentally well served by the COPFS in its core role as public prosecutor. However, the same evidence also makes clear that there should be no room for complacency and that the various shortcomings stakeholders have identified must be addressed.

Domestic abuse cases

148. The Committee received evidence and testimony that some aspects of prosecution policy did not always serve the public interest well because they, in effect, amounted to an incentive to prosecute when another approach might have been more appropriate. This was mentioned in relation to charges with a “hate crime” element¹⁸⁸ and, in particular, to charges with a domestic abuse element. The latter are the subject of a Joint Protocol¹⁸⁹ between the Lord Advocate and Police Scotland, sometimes summarised as setting out a “zero tolerance” approach to domestic abuse, although that term does not in fact appear in the document, and it was not a phrase the COPFS itself used in evidence. The Lord Advocate summarised the policy to the Committee as a presumption in favour of prosecution where there is enough evidence in law.¹⁹⁰

Evidence from stakeholders

149. Evidence on this issue was split. During visits and in formal evidence, criminal defence agents said that the policy was being applied quite rigidly or high-handedly; in a way that did not always best serve the public interest.¹⁹¹ Derek Ogg QC of the Faculty of Advocates told the Committee that he had had—



...personal experience as counsel [defending a domestic abuse case] where I have been told by fiscals that we simply had to proceed. They do not even bother now going to their senior—that might be part of the culture, because it might be seen to be causing a bit of trouble if they were to say, “This isn’t going anywhere.”¹⁹²

150. Audrey Howard of Social Work Scotland said that domestic abuse cases gave rise to complex questions. She referred to an understandable tendency to be “hesitant” about diverting such cases from prosecution. However, prosecution would not be the best policy in all cases. There would be other types of intervention that in some cases could be more effective.¹⁹³ Tom Halpin of SACRO, which works with both victims and offenders, expressed similar views.¹⁹⁴

151. In written evidence, a forensic medical examiner referred to the detention of one or both parties to a non-violent domestic abuse case as “commonplace”.¹⁹⁵ Calum Steele of the Scottish Police Federation appeared to agree, telling the Committee that—

” ... in Scotland, we have now got to a stage where, for example, couples cannot have a row in their house or if they do, and the police are informed, there is a very strong likelihood that one of them will leave in handcuffs.”¹⁹⁶

152. The police service’s application of the Joint Protocol is not directly within this inquiry’s remit. For the record, Assistant Chief Constable Bernard Higgins responded to Mr Steele’s evidence, telling the Committee that the police service recognised domestic abuse cases as complex. He said that it was not his experience that officers were predisposed to make an arrest whenever they went to investigate a domestic abuse incident. He considered that this was reflected in 2015-16 statistics showing that almost half of the domestic incidents recorded by Police Scotland were not recorded as criminal.¹⁹⁷

153. Other evidence backed both the Protocol and its application. It was seen as a necessary corrective to an historic tendency to downplay domestic abuse within the criminal justice system. Marsha Scott of Scottish Women’s Aid indicated that, if anything, there was a tendency for domestic abuse cases to be diverted from prosecution, with “enormous numbers” of perpetrators given community payback orders.¹⁹⁸

154. Rachael Weir of the Procurator Fiscals section of the FDA disputed some of the evidence that the Committee had heard, inasmuch as it might imply that cases were being prosecuted despite an insufficiency of evidence—

” ...in the almost 19 years in which I have been a prosecutor, I have never initiated proceedings in a case where I did not believe that a crime had been committed and where I did not think there was a sufficiency of evidence. No policy in the world would direct our members to do such a thing, and not one of our members would do it in those circumstances.”¹⁹⁹

155. Evidence provided anonymously²⁰⁰ by a serving fiscal in response to Ms Weir’s evidence stated that they accepted that “no depute would knowingly mark a case for proceedings where there is clearly insufficient evidence.” However, the evidence continued that cases including those marked as domestic abuse cases

were often undoubtedly being run without adequate time for proper pre-trial preparation by legally qualified staff, with the result that—

” ...a significant number of cases are proceeding to trial, or preliminary debates, with insufficient evidence to prove the case or the cases are poorly prepared. If a trial depute raises any issues he or she are often told by their line managers to just "run" the trial because (1) it is too late to tell witnesses that there is insufficient evidence in their case, or (2) the case is just about to time bar. The trial depute, as an officer of the court, is then in a very stressful dilemma. He or she either has to be unprofessional and face criticism in the public forum of the court for presenting a poorly prepared case, or risk censure from management should he or she refuse to "run" the case.²⁰¹

156. This evidence is of a similar nature to the testimony of two defence agents who worked as trainee fiscals until relatively recently, whom the Committee met privately. They said that there was undoubted pressure within the COPFS to run cases with a domestic abuse element (or a racial or stalking element) regardless of the strength of the case.²⁰²

COPFS view

157. In their evidence responding to these views, the COPFS stood by the Protocol and its application, and did not give any indication the Lord Advocate was minded to review it, in the light of the concerns that had been raised. It was the Lord Advocate's duty to set prosecution policy independently, which sometimes meant making decisions that were unpopular in some quarters. The Lord Advocate said he would “not apologise for a robust prosecution policy”²⁰³ and that—

” I absolutely do not accept the suggestion that a prosecutor would, by virtue of the policy, knowingly or deliberately raise proceedings when they did not believe that there was sufficient evidence to prosecute the case. If that happened, that would be a serious matter.²⁰⁴

158. The Lord Advocate told the Committee that the conviction rate for domestic abuse cases was 80% (against an average of 86% for all crimes in the last reporting year) which, he said “does not suggest that we are getting the decision making seriously wrong”.²⁰⁵ The Crown Agent asked the Committee to note statistics indicating that the proportion of domestic abuse cases per annum not prosecuted because of insufficient evidence was somewhat above the average for all cases.²⁰⁶

159. In subsequent correspondence, in response to a question raised in the closing evidence session, the Crown Agent informed the Committee that “a relatively high proportion” of those convicted of an offence involving domestic abuse, around one third, are admonished, and that this has remained relatively constant over the last 10 years.²⁰⁷ The admonishment figure for all convictions is 17%. An admonishment is the verbal disciplining of the offender after a finding of guilt,

without any further penalty being imposed. There may be various reasons why a judge admonishes an offender. It is not an indication that the court condones or accepts the behaviour that led to the conviction. However, an admonishment may be taken as indicating that the judge has determined that the public interest is not served by imposing any punishment on the offender, other than the admonition itself.

160. The Committee acknowledges that the criminal justice system has not always prioritised domestic abuse as it should have or treated it with the seriousness it deserves. It was necessary for a clear message to be sent by public agencies working in the system that domestic abuse is unacceptable and would be tackled robustly, in order to give victims confidence that their case would be taken seriously. The COPFS/Police Scotland Joint Protocol on domestic violence has played an important role in that process. The Committee notes the differing views it has received during this inquiry as to the COPFS's application of the protocol, notes the Lord Advocate's response to it, and asks the COPFS and the Scottish Government to reflect further on the views that the Committee heard.

Standard summary cases

161. The Committee heard views that standard summary cases had, in recent years, been effectively de-prioritised by the COPFS: squeezed by an overall reduction in resources, a rise in the number of complex solemn cases, and the effective prioritisation of particular categories of summary case; for instance cases with a domestic abuse or race element. This was the main point in the written evidence of the Glasgow Bar Association (GBA). It was a view shared by the Scottish Justices' Association.²⁰⁸ "Standard" summary cases in this context means those summary cases not effectively identified as priority cases in Lord Advocate's guidelines to prosecutors or in the joint protocol on domestic abuse with Police Scotland. These are not necessarily less serious cases: those prosecuted in the sheriff court may include, in the words of the GBA, "serial instances of drugs, public order and violent offences."²⁰⁹ They also include instances of antisocial behaviour that may be at the lower end of the scale of criminality but which can blight communities and make people feel unsafe. Standard summary cases make up a very large proportion of all reported crime.
162. The GBA's Lindsey McPhie identified "standard" assault cases (ie those without a domestic abuse element) as giving rise to particular concerns.²¹⁰ She said that such cases could be complex, particularly where child witnesses were involved.
163. The representatives of the Edinburgh and Aberdeen Bar Associations endorsed the GBA's views.²¹¹ The Committee also heard views of a broadly similar nature on some visits and in the private meeting with two former fiscals now working as defence solicitors.²¹² They said that it was in relation to these sorts of cases that mistakes were most likely to be made. These included mistakes that could lead

to the abandonment of the trial. The former fiscals said that the repercussions tended not to be felt outside the courtroom itself.

164. The Committee's own admittedly brief and anecdotal experience during its visit to Edinburgh Sheriff Court in December 2016 was that a significant minority of the summary cases that the Committee watched in the sheriff or JP courts appeared to come to a premature end because of a procedural error or omission on the prosecution side, such as a failure to properly cite an accused or witness.
165. In its evidence, the COPFS did not directly address the views of the GBA and others on this issue. Fiona Eadie of the fiscals branch of the FDA union acknowledged that lower level cases involving antisocial behaviour were typically not prioritised in the current system and that there was sometimes insufficient preparation.²¹³

166. The Committee calls on the COPFS and Scottish Government to note evidence as to the quality and consistency of prosecution of those summary cases in relation to which special considerations do not apply by way of Lord Advocate's guidelines to prosecutors or in the Joint Protocol on domestic abuse. Such cases include instances of antisocial behaviour, crimes of dishonesty or less serious violent crimes. The evidence suggests that these are sometimes under-prioritised.

Specialist prosecutions

167. The Committee sought views on whether the COPFS had the appropriate skillsets it needed to carry out its prosecutorial role. This includes prosecuting the wide range of different crimes that the COPFS may encounter, ranging from historic child sexual abuse to corporate accounting fraud. As noted elsewhere in the report, the COPFS has moved towards greater specialisation in recent years, setting up offices dealing with sexual offences, serious and organised crime, and international cooperation, amongst others. The Committee notes that, in a relatively small jurisdiction such as Scotland, there are limits to this approach. There may be some types of case that only come before the criminal courts a handful of times in a few years, but which are of a particular complexity. It is hard to build up specialist expertise in such cases. Derek Ogg QC, a former head of the COPFS sexual offences unit told the Committee that, if there is considered to be a lack of in-house specialism to prosecute particularly complex crimes coming before the High Court, this could be addressed by borrowing that expertise; recruiting "locum" advocates depute with experience in that field for the duration of the case.²¹⁴
168. Some submissions expressed the view that the COPFS did not always have the specialist skillsets needed to prosecute certain types of crime as effectively as it should, for instance corporate or regulatory offences.²¹⁵ HM Revenue and Customs gave positive evidence about its working relationship with the COPFS

in the prosecution of crimes in which it was involved, although it indicated that the COPFS's relative under-resourcing in some areas, for instance technology, sometimes put it under strain.²¹⁶

Wildlife crime

169. One specialist area on which the Committee received evidence was environmental and wildlife crime. Evidence from Scottish Environment Link and the RSPB gave a balanced view on the COPFS's record in this area.²¹⁷ They welcomed the setting up of a full-time wildlife and environmental crime unit in 2011. It was perceived as having professionalised the prosecution of these crimes. The prosecution rate for reported wildlife offences remained very low at around 10-15% of cases, but the SE Link witness, Ian Thomson, acknowledged that wildlife crime cases often raised tricky evidential issues that made prosecution difficult. Where cases actually went ahead, conviction rates were good.²¹⁸
170. However, Mr Thomson expressed frustration and disappointment that no progress had been made implementing a recommendation in the 2008 Scottish Government report *Natural Justice*²¹⁹ that, following the completion of any significant criminal case concerning environmental wildlife crime, there should be a full debrief involving the police, the COPFS, and other relevant bodies including third sector organisations such as the RSPB. When SE Link had raised concerns over this and related matters in a 2015 research paper, they had been rebuffed by the then Lord Advocate who had refused the offer of a meeting.²²⁰
171. Evidence received from the Crown Agent near the end of the inquiry stated that he had considered the evidence the Committee had received on wildlife crime, and that—

” While there is much to be pleased about it in terms of our new specialised approach to this area of offending, I am satisfied that we should now renew our efforts to build stronger relationships with those interest groups.²²¹

Health and safety prosecutions

172. Several written submissions addressed themselves primarily to the COPFS's handling of health and safety offences. Their evidence was critical: in essence, it was that the COPFS's approach was insufficiently rigorous²²² or that prosecutions were slow to resolve, and noticeably slower than comparable cases south of the border.²²³ In view of these comments, the Committee agreed to invite the Association of Personal Injuries Lawyers (APIL), represented by Gordon Dalyell, and Thompsons Solicitors, represented by Patrick McGuire, to give evidence.
173. The witnesses told the Committee that that it was their perception that the COPFS tended to treat health and safety prosecutions as almost akin to civil cases, entering into complex negotiations with the individual or, as is more

commonly the case, the organisation accused of the offence. This process was lengthy, sometimes going on for years, and this in itself created risks of justice being denied, as where the corporate body accused of the crime ceased to exist. The process was also seen as lacking transparency and as not always being conducted with due regard to the interests of victims.²²⁴

174. APILS's evidence credited the COPFS for having increased the number of health and safety prosecutions in recent years. However, this was from a very low base, and the number of prosecutions was still small. APIL said that the prosecution rate for health and safety offences, measured against the number of reportable injuries in the workplace per annum, was only slightly above 1%.²²⁵ When the Committee asked Mr Dalyell and Mr McGuire to give a reason why prosecutions were so few, they said that the root cause appeared to be a lack of resources. Health and safety cases were a complex subset of the criminal law, and the COPFS, they said, appeared not to have the time or expertise to deal with more than a handful per year.
175. The witnesses singled out in particular the low prosecution rate for failing to have employer's insurance, compared for instance to the prosecution rate for driving a car without insurance. They said they could offer no clear explanation for this, other than an issue of "mindset": the COPFS, they suggested, simply did not view such cases as important. They said that this was mistaken, as a failure to have employment insurance could mean a denial of justice to a person if a serious injury at work occurred or, in the case of a fatality, to their family.²²⁶
176. The Crown Agent disputed some of this evidence, telling the Committee in written evidence that specialist prosecutors in the Health and Safety Department prosecute on the basis of cases referred to them by the Health and Safety Executive. The number of such referred cases has hovered at just over 100 in recent years, of which around 80% had been prosecuted, with a conviction rate in excess of 90%. He told the Committee that—

” Against this background of success, we are, in response to this inquiry, exploring with the relevant reporting agencies why we receive very few cases in respect of employer's liability insurance. Should it become clear that there is a need to take more effective enforcement action in this regard then that will become part of our regular liaison with those agencies.²²⁷

177. In relation to criticisms as to the manner in which prosecutions were carried out, the Crown Agent said—

” I can assure the Committee that this is not, as has been suggested, because we treat the cases as if they were civil litigation or allow accused unreasonable periods of time to resolve the cases. The reality is that health and safety investigations are frequently highly complex both in relation to the facts and the legal responsibilities of the various potential duty holders.²²⁸

178. The Committee acknowledges the COPFS's evidence that it intends to build stronger relationships with third sector stakeholders in the prosecution of wildlife or environmental crime. The Committee asks the COPFS to respond to views heard in evidence that recommendations in the Scottish Government's 2008 report *Natural Justice*, particularly in relation to post-prosecution debriefings, have not been fully implemented, and to set out its plans to address this.

179. The Committee is concerned by evidence of very low prosecution rates for failure to hold employer's liability insurance, noting that the consequences of failing to be properly insured can be devastating for individuals and families. The Committee welcomes the COPFS's commitment to explore the reasons behind the low number of referrals with relevant reporting agencies and requests an update from the COPFS.

180. The Committee seeks the COPFS's view on whether there is merit in recruiting locum prosecutors to prosecute High Court cases turning on complex and specialist aspects of criminal law such as corporate fraud or health and safety breaches and, if so, whether this is part of its current practice.

Bail and remand

181. Another duty of prosecutors is to decide whether to oppose applications for bail. In essence, in any bail application the court is being asked to decide whether, having regard to the public interest, there is good reason for opposing bail.²²⁹ It is the professional responsibility of the prosecutor to put relevant information before the Court to enable it to come to a decision. The safety of the public must be considered and the court must also take into account the risk of the accused absconding before trial. However, the consequences of an accused being denied bail can be serious, affecting for instance jobs, families and relationships. Prosecutors must also be mindful that the public interest may not be served if there are more remand prisoners in jail than the system can support.

182. Audrey Howard, representing Social Work Scotland, told the Committee that pressures in the system meant that fiscals' offices were not timeously communicating with social work departments as to whether they were opposing bail and on what grounds. As a result, too many decisions were being made without a proper assessment of the accused. The end result was that people were sometimes being remanded more because of social circumstances (eg homelessness) than because they seemed to pose a risk.²³⁰ The Community Justice Voluntary Sector Forum noted "evidence indicating that remand is used disproportionately for women with non-violent offences and that this is increasing";²³¹ a view shared by Liz Dahl of Circle, a charity working with children and families in areas of deprivation.²³² Dr Nancy Loucks of Families Outside, which supports the families of offenders, indicated that the COPFS did not give

sufficient consideration to families when deciding its approach to bail applications. She observed that “children do not distinguish between remand and custodial sentences”.²³³

183. The Committee is concerned by evidence that the courts are sometimes being asked to take decisions on bail without access to the full range of relevant information. This may lead to decisions being made that are not necessarily in the public interest, for instance to refuse bail on the basis of the accused’s homelessness. Whilst the safety of the public and the integrity of the prosecution process must be the paramount considerations, the public interest is not served by individuals being remanded when more suitable alternatives may be available. The Committee asks the COPFS and Scottish Government, on behalf of the Scottish Prison Service, to respond to this evidence.

Centralised policy-making and local autonomy

184. The COPFS is a national service aspiring to achieve consistently high standards across Scotland. It is in the public interest that both accused and victims should expect the same professional standard of prosecution wherever their case calls. There was a consensus in evidence that the COPFS has become a more centralised organisation in recent years. Some evidence broadly welcomed this, but the Committee also heard views that this process had gone too far; to the point where it was impacting negatively on the COPFS’s effectiveness as a public prosecutor. Whether the COPFS was striking the right balance between pursuing centrally driven policies and letting local prosecutors take their own decisions emerged as one of the key themes of the inquiry.

Specialisation and central case-marking

185. A closely related issue is that of specialisation. In effect, specialisation is a form of centralisation, as it means that a small group of specialist prosecutors will tend to determine national approach to prosecuting particular crimes wherever they occur.

186. Specialisation has included the setting up a case-marking unit around 15 years ago. Local fiscals no longer mark cases at the initial stage of the prosecution. Instead, there are two centres – at Paisley and Stirling – where practically all cases are now marked. As the Committee understands it, the case marking process may involve not only a determination as to whether or not a case should be prosecuted, but further instructions on how to handle the case, for instance whether to accept plea bargains and, if so, on what basis.²³⁴

Other types of specialisation

187. The setting up of a national sexual crimes unit at the COPFS in 2009 was welcomed by many stakeholders. They thought it had led to such cases (which

now constitute around 70% of all High Court cases) being better handled at least at a strategic and policy level, with the views and interests of victims and their advocates better taken account of. This was the view of organisations including Scottish Women's Aid and Rape Crisis.²³⁵ Susan Gallagher of Victim Support Scotland told the Committee that her organisation's experience of centralisation – or specialisation – as it applied to victims was largely positive; it was when the Victim Information and Advice service had become more decentralised that inconsistency had crept back in.²³⁶ As noted above, the setting up of a specialist wildlife crime unit was also welcomed by stakeholders as having helped professionalise the COPFS's approach to these offences.

Effect of central marking on local decision-making

188. Other evidence was less positive, particularly in relation to the central marking of cases. It was not just that local fiscals no longer marked cases: there was a perception that they were increasingly being told how to run them. Derek Ogg QC of the Faculty of Advocates (and formerly of the COPFS) was amongst those to express concerns about the effect of increased centralisation, and of more centrally determined prosecution policy, on decision-making, job satisfaction and morale. He said it had helped create a more risk-averse culture, running through the service from top to bottom. Amongst other things, this led to cases being run even where the prosecutor knew they were weak, because this was seen as the safest thing to do, and the least likely to have repercussions further up the COPFS chain of command.²³⁷
189. On visits, the Committee heard views from some legal practitioners that local offices had lost autonomy. In some cases, this even meant having to run cases against their own professional judgment. The suggestion was that they had lost the skill of decision-making because so many decisions now had to be passed up the chain to senior management.
190. This was echoed in the evidence of the criminal bar associations from whom the Committee heard. One of the problems identified was that defence agents were no longer clear who to go to if they wanted to discuss the possible resolution of a case: was it the junior fiscal running the case, their manager in the fiscal's office, or someone more senior still? Glasgow Bar Association President Lindsey McPhie told the Committee that there was a need for the COPFS to streamline its internal procedures so that junior fiscals could promptly get the authority they needed to take decisions about a case, including whether to drop it.²³⁸
191. The Committee heard similar views from the two former junior fiscals from whom it took private testimony, whose views were referenced in the discussion earlier on domestic abuse. (The application of the Joint Protocol on domestic abuse was seen by some witnesses as emblematic of the COPFS's tendency towards centrally driven policy.) The former fiscals said it was no longer clear to them who really ran the local fiscal's office. For them, the issue of local autonomy was arguably the biggest single issue facing the service.²³⁹ The written evidence of

the Aberdeen Bar Association stressed the importance of local fiscals being given the freedom they needed (which, the ABA indicated, they currently did not have) to decide how to run cases for themselves—

” Specifically, they should be able to exert their judgment, in deciding what should and shouldn’t be prosecuted, and where they can channel and focus the resources they have, rather than being dictated to by others, far removed from the reality of decision making at the coal-face.²⁴⁰

192. The ABA said that local fiscals were too often bound by “political concepts and policies”, constraining their power to get on with ensuring justice is done. They ABA said that fiscals should ultimately—

” ... be allowed to be lawyers. Deputes should be given the freedom to assess and evaluate each case individually, and on its own merits.²⁴¹

Local factors including diversions from prosecution

193. There were also concerns that, under a central marking system, local factors were not adequately taken into account, particularly in relation to the availability of diversions from prosecution.²⁴² Diverting cases from prosecution is one of the lesser known aspects of the fiscal’s role but is important. It is unlikely that the criminal justice system, in its present form, could cope without a significant proportion (roughly a third in recent years) of cases being dealt with other than by prosecution.²⁴³ On the other hand, there is the potential for public confidence in the justice system to be undermined if there is a perception that the wrong sorts of cases are being diverted.²⁴⁴ Evidence indicates that the inappropriate use of diversions may, in the longer term, increase the burden on the justice system whereas judicious use of diversions may lower it, as well as serving the public interest.²⁴⁵

194. SACRO and Social Work Scotland witnesses told the Committee that the COPFS’s move to centralisation had negatively affected the quality of its work in relation to diversions from prosecution. The written evidence from SACRO, which works in the fields of rehabilitation and restorative justice, referred to “a lack of knowledge of what programmes are available locally” meaning that opportunities to divert cases from prosecution towards local projects were sometimes being missed. It saw this as directly linked to the COPFS’s move towards more centralised case marking, remarking that—

” Where a large number of PFs are marking papers, it is difficult to know if they are fully conversant with local services.²⁴⁶

195. SACRO’s Tom Halpin expanded on these points in his evidence to the Committee, arguing that, with a centralised system, the decision-making around identifying appropriate diversion schemes that might help “heal the harm” of the offending behaviour was—

” ... weaker because the focus is on the process and on efficiency in the administration of justice. Decisions about, say, diversion from or alternative to prosecution need a strong link with what is available locally.²⁴⁷

196. Audrey Howard of Social Work Scotland told the Committee that—

” Centralised marking has resulted in a loss of local knowledge about diversion schemes that would previously have informed decisions about marking. The fiscals who mark papers now do not know about local schemes ... and they have not built up confidence about the robustness of the schemes. They do not have that kind of local knowledge.²⁴⁸

197. However, she expressed optimism that the Scottish Government’s community justice agenda may provide fresh scope to build awareness about diversion schemes across the criminal justice sector. The Committee takes this to be a reference to the new approach to community justice being brought in through implementation of the Community Justice (Scotland) Act 2016, including the setting up of a central body; Community Justice Scotland. Ms Howard said it was incumbent on all stakeholders in community justice, and not just the COPFS, to try to raise their game in order to make the best use of the full range of diversions that are potentially available to address offending behaviour.²⁴⁹

198. Two serving JPs, Sam McEwan and John Little, spoke in more general terms of a perceived erosion of local knowledge within the fiscal service and a running down of local fiscals’ offices. They considered that this led to inappropriate penalties being handed out that were not in the public interest. In particular, they were concerned that too many on-the-spot police fines were being handed out.²⁵⁰ The handing out of police fines is a matter for the police service and not within this inquiry’s remit, but the Committee understands the JPs’ position to be that this was reflective of a general policy, agreed over the heads of local communities, of trying to keep certain categories of relatively low-level antisocial behaviour out of the courts, in part for resource reasons. The JPs said this was not always in the public interest: allowing the case to be prosecuted in the JP court might lead to more pragmatic and humane decision being made. In response to this evidence, Police Scotland indicated that the introduction of “Recorded Police Warnings” in January 2016 would have led to a marked decrease in the use of police fines.²⁵¹ (In supplementary evidence, Mr McEwan said that the Recorded Police Warnings scheme was not something of which he or colleagues were aware.²⁵²)

Views from COPFS representatives

199. The FDA, representing fiscals, took a balanced view of the move towards a more centralised and more specialist service in recent year, recognising that it had its advantages and disadvantages.²⁵³ However, it was overall considered to have been positive. In relation to case-marking, the union’s Rachael Weir told the

Committee that she considered it had been beneficial because it had led to greater specialist expertise in case marking being built up.²⁵⁴

200. As noted elsewhere in the report, the Lord Advocate publicly affirmed his confidence in COPFS staff as the organisation's "greatest asset" and expressed his "absolute trust and confidence in the judgment of those who prosecute on my behalf up and down the country". However, the COPFS also made clear in its evidence to the Committee that one of the drivers of the move towards centralisation had been a desire to achieve greater consistency, and a higher quality public service overall.²⁵⁵ Overall, nothing in the COPFS's evidence indicated to the Committee that the COPFS was minded to fundamentally reconsider its approach, in the light of views that had been expressed. The Lord Advocate cited learned authority from the 19th century that it was his role to ensure "the due and equal distribution of criminal justice", so that all may have equal protection under the law, in order to underline that the concept of achieving consistency in prosecution policy was not a new one.²⁵⁶ It was his view that the current system did allow for some flexibility—



The system can accommodate matters that are of concern in local areas. Indeed, in their reports, the police might identify a particular issue as being a matter of concern. I can put it in this way: through having a national approach, we can ensure that, where there is justification for a variation from the norm to be applied in a particular locality, that is done consistently and does not depend on the views of a particular individual in a particular local area.²⁵⁷

201. The Crown Agent said that previous less centralised models had run into problems of their own, such as some courts sitting until late evening. He said that the current system had brought greater professionalism and consistency. Inasmuch as it had probably brought down the number of court sittings, it may have reduced overall costs, although that was not, he stressed, the main reason behind the policy.²⁵⁸ In relation to the comments of the GBA and others that the current decision-making approach to individual cases can appear opaque and unnecessarily hierarchical, the Crown Agent acknowledged that there was, or had been an issue, explaining that recent internal reforms had led to the number of "approval levels" for ongoing cases being rationalised, with the grade for approval reduced to a local level.²⁵⁹

Diversions and local knowledge

202. The Lord Advocate explained to the Committee that teams at the two central case-marking centres are organised by reference to Scotland's six sheriffdoms. He argued this helped enable case-markers to develop local knowledge of particular areas.²⁶⁰ In relation to diversions from prosecution, the Lord Advocate said he had reflected on the evidence and posed an open question as to whether it indicated a lack of consistency across the country on the availability of diversion schemes as much as any perceived lack of local knowledge on the part of case markers.²⁶¹

203. Supplementary written evidence from the Crown Agent queried SACRO's evidence that there had been a trend away from referrals to restorative justice schemes, arguing that it was not strongly supported in the follow-up information SACRO had itself provided to the Committee. The COPFS's own statistics had indicated a gradual rise in the number of diversions from prosecution over the course of the current decade.²⁶² The Committee notes that it would require further analysis to determine the extent to which diversions by case markers appear to have had outcomes that could be described as successful.

204. The Crown Agent's written evidence also queried the JPs' evidence to the Committee, which he interpreted as being to the effect that—



...prosecutors issue direct measures to avoid the expense of prosecuting cases in court. This is inaccurate and contrary to the Lord Advocate's policies on decision making. The Scottish Parliament has given prosecutors a range of powers to take action against offenders and we seek to make effective use of all these powers.²⁶³

205. Both the COPFS and the SCTS referred to statistics indicating that around 80% of direct measures consisting of fines or fixed penalties end up being paid.²⁶⁴

206. The Committee notes the COPFS's view that a drive towards increased centralisation and specialisation is likely to have helped it become a more efficient and professional organisation. The setting up of specialist prosecution units (for instance in relation to sexual offences) has been broadly welcomed. However, evidence has made clear that some trade-offs have been involved. It has been concerning to note evidence that local fiscals may sometimes find themselves running cases against their own professional judgment. The Committee also notes views that increased centralisation may have had an effect on morale and job satisfaction in local offices.

207. The Committee seeks clarification from the COPFS that consideration of the autonomy and decision-making capacity of local fiscals is being taken forward in its current "Fair Futures" programme being developed in consultation with its staff.

208. The Committee notes views that the centralisation of case marking has led to an erosion of knowledge as to the availability of local schemes and programmes where case markers are considering alternatives to prosecution. The Committee asks the Scottish Government to consider whether, if these perceptions are valid, Community Justice Scotland could be invited to address them in its ongoing work to develop a new model for community justice delivery.

209. More generally, the Committee asks the COPFS and Scottish Government as to what monitoring there is of the effectiveness of diversion from prosecution and whether and how the results of that monitoring are fed back to the COPFS for continuous improvement purposes.

Victims and witnesses and the COPFS

210. The Committee's call for evidence asked—

” 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?

211. This part of the report considers that issue, outlining in turn the relevant law on victims and witnesses, the processes the COPFS has in place to administer the law and related policies, and the evidence that the Committee has received. First, there is general discussion of victims' place within the prosecution process and the COPFS's relationship with them.

“Victims” and “complainers”

212. In the formal language of Scots criminal procedure, there are no “victims” of a crime: there are “complainers”. In this report, the term “victim” is used to describe anyone presenting as the victim of a crime both before and after a verdict is reached. This is because “complainer” is not everyday language. The presumption of innocence is of course a cornerstone of the criminal justice system, and the Committee's use of “victim” in this wider sense is not intended to bring this into question. However, as a matter of fact, in the vast majority of criminal trials, there will be a finding of guilt, and in most cases there is at least one identifiable victim. There can also be victims of a crime, even though no one is found guilty. Close friends and family members of crime victims may also be heavily impacted by the crime and may rightly be considered victims in a wider sense.²⁶⁵ The discussion of witnesses in this section of the report is mainly about lay witnesses, many of whom will themselves be secondary victims of crime. Evidence in relation to the experience of police witnesses and expert witnesses at trials was discussed in previous sections.

The public interest and victims' interests

213. Derek Ogg of the Faculty of Advocates explained to the Committee that “complainer” and not “victim” was the constitutionally appropriate term for the criminal process to use, as the whole purpose of the process is to establish whether a crime has been committed. He added that—

” The prosecutor's job is to prosecute fairly in the public interest. If the evidence does not match up to the requirements of evidence, whether that be through its quality, reliability or quantity there might be no substantial prospect of a conviction at all. The prosecutor is not there to represent the victim to get the case limping into court under any circumstances. A judgment has to be made in the interests of justice to say whether there is no public interest in prosecuting the case further.²⁶⁶

214. The issue is not therefore one merely of terminology but gets to the heart of the COPFS's relationship with victims and witnesses. On the one hand, the COPFS is, as evidence to the Committee from the Scottish Criminal Bar Association put it, "not the complainer's lawyer".²⁶⁷ It does not give legal advice to victims, it does not accept instructions from them, and it does not prosecute on their behalf. As Mr Ogg's remarks underline, it is also the professional duty of the prosecutor to dispassionately assess all prosecution evidence, including the victim's evidence, and to be open-minded as to its robustness and reliability.
215. The Sheriffs' Association also stressed that that the public interest should remain the Crown Office's paramount consideration.²⁶⁸
216. On the other hand, in any effective prosecution system, victims and witnesses must feel valued and involved. Whilst coercive measures are ultimately available to prosecutors, any justice system that had frequent recourse to them to secure victims' engagement would rightly be seen as failing. The Lord Advocate told the Committee that "as prosecutors, we cannot do our job unless we give confidence to victims that they will be enabled to speak up through the justice system".²⁶⁹
217. The COPFS also has specific legal duties towards victims and witnesses, as discussed further below. Finally, leaving aside specific legal duties, victims and witnesses have legitimate expectations as to their treatment during the prosecution process. These include being treated respectfully and sensitively and being listened to. Victims, and some witnesses, are likely to be raw and traumatised after a crime, and the prosecution process may lead to that trauma being relived. This applies even if a prosecution is not ultimately brought. Indeed, evidence has underlined that a decision not to proceed with a trial can itself be painful and traumatising for victims.²⁷⁰
218. Examples provided over the course of the inquiry illustrated the difficulty of striking the right balance. One of these related to plea-bargaining. The prosecutor may legitimately decide that it is in the public interest to accept a defence proposal. However, the Committee heard testimony that where agreement is reached over the heads of victims this can cause hurt and leave victims feeling disillusioned about the whole criminal justice process.²⁷¹ Another example relates to non-harassment orders. These are civil orders to protect victims of domestic abuse that the Crown may ask the court to grant at the end of a relevant case. Victims may feel that the Crown has a duty to request an order and feel badly let down when prosecutors fail to do so.²⁷² (The Committee notes that forthcoming legislation on domestic abuse may afford an opportunity to address this concern.²⁷³)
219. It was the position of Mr Ogg, and of the Faculty of Advocates generally, that the pendulum had swung too far, and that the COPFS was coming to be seen as the victim's lawyer.²⁷⁴ The Lord Advocate's prosecution policy on domestic abuse was seen as one area where this was being played out in practice.

220. Organisations representing victims tended to take a very different view, as discussed in more detail below. Without pre-empting that discussion, it is fair to say that evidence to this inquiry does not, overall portray the COPFS as an organisation that spends too much time listening to victims and too readily acts on their wishes. Evidence from Scottish Women's Aid argued that—



The hallmark of a democratic, representative and fair criminal justice system is one that protects its most vulnerable, be they accused, complainers or witnesses. It is just and proper that in the exercise of their prosecutorial duty, the COPFS' role encompasses not only its human rights obligations but also those imposed upon both them and the State by the EU Directive on the rights of victims in criminal proceedings, intended to ensure participation of victims and witnesses, and which is incorporated in Scots law [via the Victims and Witnesses (Scotland) Act 2014: see discussion below].²⁷⁵

221. The Committee supports the principle that the COPFS prosecutes in the public interest and not directly in the interests of individual victims of crime: it is not “the victim’s lawyer”. The Committee understands that this may sometimes lead to difficult decisions being made that victims find painful. However, the Committee considers that the principle is key to protecting the independence and integrity of the prosecution service.

222. The Committee considers that there is no inherent contradiction between putting the public interest first during the prosecution process and putting victim care at the heart of criminal justice system. In particular, victims have a right to be listened to and to be treated with respect and sensitivity. Their views matter and they should be consulted, whenever possible, at appropriate points in the prosecution process.

The COPFS and the accused

223. The presumption of innocence means in practice the right to a fair trial in which the prosecution must prove its case beyond reasonable doubt. Pursuing a conviction that the Crown knows may be unsafe is not in the public interest. This may include taking account of whether the accused is vulnerable or has mental health problems. A disproportionate percentage of accused in criminal trials will be in this category.²⁷⁶ The Committee has been mindful during this inquiry of the needs and rights of accused people and has solicited and received evidence from those who work with them. This includes criminal defence lawyers, social workers and third sector organisations. Evidence has also been received directly from people who had the experience of being an accused in a criminal trial.²⁷⁷
224. This evidence has not, generally, been of a strongly different character to that of other witnesses, including victims. Similar concerns were reported about the COPFS not always appearing to have the staff or resources it needs, and about frustrating delays that could at times have serious effects on the accused's

welfare. The COPFS's standard of communication was often not seen as satisfactory.²⁷⁸

225. As outlined earlier in this report, there were areas of the COPFS's work with a direct impact on accused people; bail applications and diversions from prosecution, where witnesses raised questions about the COPFS's record. Evidence was also led expressing concerns about—

- *warrants to arrest an accused for non-appearance at a court hearing*: the COPFS has the power to withdraw the warrant from the police and fix a hearing at which the accused is invited to attend rather than being arrested. The Edinburgh Bar Association said that the COPFS now seldom used this power. There can be mitigating factors that explain why an accused did not attend; ill health or bereavement for example. The EBA said that the new policy “can result in vulnerable people being arrested and held in custody unnecessarily, with all the distress that entails;”²⁷⁹
- *time limits in solemn cases*: Various time limits are set out, the best known being the “140 day rule” that, where the accused is remanded in custody, the trial must proceed within 140 days.²⁸⁰ The Crown is permitted to ask the court for an extension. The Committee was concerned to note evidence from the Scottish Criminal Bar Association, which represents defence advocates, that the Crown was now “routinely” requesting, and obtaining, extensions in a manner that the SCBA described as “oppressive”, causing inconvenience and distress to accused, victims and witnesses alike. The Association argued that—



the Lord Advocate ought to make it clear to Government that in order to obtemper [ie comply with] the statutory time limits, more is needed to be done to put such resources in place to prepare and produce indictments well within time limits and not up to the wire.²⁸¹

226. The Committee notes that the Inspector of Prosecutions has published two reports on the management of time limits in the last two years. The reports do not attempt to scope the extent to which limits are being exceeded but make recommendations on how the COPFS might better manage its approach to time limits. The Inspector states that it has become increasingly difficult for the COPFS to manage time limits in solemn cases for a variety of reasons, including budgetary restraints.²⁸²

227. The Committee considers that an effective, efficient and fair COPFS in everyone's interests; accused, victims and witnesses alike. The Committee is therefore concerned by evidence that a lack of preparation time means that time limits in solemn trials are being “routinely” exceeded and seeks the COPFS's response.

228. The Committee also asks the COPFS to respond to evidence that its general policy is not to seek the withdrawal of warrants for arrest of an accused for non-attendance, even where there may be exculpatory or mitigating factors. The Committee accepts that non-appearance for a court hearing is a serious matter but asks the COPFS to respond to concerns that, if this is its policy, it may impact disproportionately on vulnerable people.

The family of the accused

229. The Committee was concerned by evidence that families and dependents of accused people are sometimes left in a state of uncertainty during and after the prosecution process.²⁸³ They may not know what is going on, because of breakdowns in communication or because the whole process generally appears opaque. In some cases, the absence of support or information for family members of the accused may simply reflect the absence of any particular rights in law. Nancy Loucks of Families Outside, a charity working with families of offenders, referred to the case of a man with learning difficulties who was convicted and sent to prison. Having heard nothing of him for weeks, his mother thought that he had died.²⁸⁴ Whether the main responsibility for alerting family members in these situations falls on the COPFS or on another agency was not an issue the Committee had time to explore during this inquiry.

230. The Committee asks the COPFS and Scottish Government to clarify what information (if any) public agencies must provide to families and dependents of accused people and what measures are in place to ensure that the information is provided. The Committee seeks clarification from the COPFS and Scottish Government as to what measures are in place to ensure that family members or vulnerable adults accused or convicted of a crime are contacted and notified.

COPFS responsibilities to victims and witnesses

231. Until around the millennium, the COPFS, in common with other public agencies, had few formal responsibilities towards victims of crimes. In the words of the COPFS they “were treated essentially like other witnesses, and their needs were not catered for at all by the system”.²⁸⁵ There have been significant legal changes since then. Some of these have benefited victims specifically; others have benefited both victims and witnesses.

232. The first wave of reforms related mainly to the actual giving of evidence in court. Laws were passed in 2002 tightening the rules on permissible evidence in sexual offences cases, and preventing the accused in such cases conducting their own defence.²⁸⁶ In 2004, the definition of “vulnerable witness” was expanded.²⁸⁷ The previous definition had focussed on mental illness or disability: the revised

definition added a more flexible category of those considered vulnerable due to “fear or distress in connection with giving evidence at trial”.

Special measures

233. The main consequence of being deemed a vulnerable witness is the right to request special measures when giving evidence in a trial. Standard special measures (ie measures which vulnerable witnesses can automatically request) comprise—
- giving evidence by live television link;
 - giving evidence in court with a screen to prevent the accused being in the witness’s line of sight;
 - giving evidence with a supporter.
234. Other types of special measure (giving evidence in closed court, giving evidence via a commissioner and giving evidence by means of a prior statement) are potentially available if the court is satisfied that their use is justified under the circumstances.²⁸⁸

Cross-examination of victims and other witnesses

235. Despite these changes, giving evidence for the prosecution in a criminal trial remains a challenging and potentially traumatising experience. During this inquiry, the Committee received some evidence and testimony indicating that the balance between permissible and impermissible cross-examination is still wrong and that defence questioning can sometimes be perceived by witnesses as harassing or humiliating.²⁸⁹ A related concern would be if the defence attempted to access sensitive medical or other information about the victim.²⁹⁰
236. The question of what constitutes legitimate evidence-gathering or cross-examination in a criminal trial raises complex issues and is not within this inquiry’s remit. As discussed earlier, the ongoing Evidence and Procedure Review envisages far less evidence having to be taken from vulnerable witnesses in the courtroom setting. The Committee does take the opportunity to note the legal requirements, as set out immediately below, that victims should be protected from secondary and repeat victimisation or intimidation and that both victims and witnesses have a right to be informed about criminal proceedings and have access to appropriate support. These requirements apply to the COPFS and other relevant public agencies.

237. The Committee considers that the safety and mental welfare of victims, balanced against the accused’s right to a fair trial, should be at the forefront of consideration during the prosecution process. The Committee asks the COPFS and Scottish Government to confirm whether it is their

understanding that Victims and Witnesses (Scotland) Act 2014 imposes legal duties on the COPFS, and other agencies, in relation to the hostile cross-examination of witnesses during a criminal trial and, if so, to clarify what practices and policies are in place to ensure that relevant legal requirements are met.

Victims and Witnesses (Scotland) Act 2014

238. The Victims and Witnesses (Scotland) Act 2014 is an important milestone for victims' and witnesses' rights. Elements of it are still being brought into force and it may be some time before its full effects are felt and aspects of its interpretation have settled down. It will be clear from the summary set out below that fully implementing it is a significant task for the COPFS and the other public agencies to which it applies. The Act clarifies and extends victims' and witnesses' rights and creates some entirely new rights. It opens with a statement of general principles that —

- a victim or witness should be able to obtain information about what is happening in the investigation or proceedings,
- the safety of a victim or witness should be ensured during and after the investigation and proceedings,
- a victim or witness should have access to appropriate support during and after the investigation and proceedings,
- insofar as it would be appropriate to do so, a victim or witness should be able to participate effectively in the investigation and proceedings.

239. In relation specifically to victims, section 1A further provides that—

- victims should be treated in a respectful, sensitive, tailored, professional and non-discriminatory manner,
- victims should, as far as reasonably practicable, be able to understand information they are given and be able to be understood in any information they provide,
- victims should have their needs taken into consideration,
- when dealing with victims who are children, the best interests of the child should be considered taking into account the child's age, maturity, views, needs and concerns,
- victims should be protected from secondary and repeat victimisation, intimidation, and retaliation.

240. The 2014 Act also sets out a number of specific rights and duties falling on prosecutors (and in some cases on other office-holders), including—

- a duty to have a complaints procedure for victims;
- victims' right to understand and be understood during the prosecution process, including a specific responsibility on the COPFS to make relevant communications "as clear and easy to understand as possible";
- a duty to make rules enabling victims to request a review of a decision not to prosecute;
- victims' rights to request information about a case, such as what is being done, what the charge is, and, if the COPFS is not prosecuting the case, why not;
- a duty to take reasonable steps to enable victims and their family to avoid contact with an accused in the course of criminal proceedings.

241. The 2014 Act also extended the availability of victim statements: voluntary statements delivered once a guilty verdict has been reached describing the impact of the crime on the victim. They are only available in respect of a prescribed list of crimes. The 2014 Act extended their availability to those aged 12 or over.

Victims' Code for Scotland

242. The COPFS and other bodies to whom the 2014 Act applies (including Police Scotland and the SCTS) are joint signatories to a Victims' Code for Scotland, a 15 page pamphlet setting out in plain language what service victims of crime are entitled to expect from the criminal justice system.²⁹¹ The Code was launched in February 2016. Evidence discussed below suggests that many victims would have benefitted from receiving the information set out in the Code when they became caught up in the criminal justice system.

243. The Committee welcomes the Victims' Code for Scotland and considers that the pamphlet should be available to all victims at their first point of contact with the criminal justice system. The Committee seeks clarification from the COPFS and Scottish Government as to current practices in relation to making the Code available.

Child witnesses

244. Child witnesses, like vulnerable witnesses, are entitled to access special measures when giving evidence in a trial. The 2014 Act defined a child witness as anyone aged under 18 years. (Previously, it had been 16.) In written evidence, the Scottish Commissioner for Children and Young People, posed a number of open questions as to how well the prosecution service was currently meeting the needs of children and young people in terms of matters such as providing information in a way that they would find accessible or seeking children

and young people's views before taking important decisions in connection with a case. His concluding remarks were that—



...COPFS have been, and currently are, involved in a wide range of positive work in relation to children and young people. It is clear that within COPFS there is a desire to ensure that systems and processes work better for children and young people.²⁹²

245. As with vulnerable witnesses, the ongoing Evidence and Procedure Review envisages evidence being taken from children “in an entirely different way”.²⁹³ The proposal is to obtain oral evidence from children via an interview outwith the courtroom setting. Various international models are under consideration. The Review cites evidence indicating not only that the current process can be very stressful for children, but that it may not be the best way to obtain reliable and useful testimony.²⁹⁴
246. Whilst acknowledging that work still needed to be done to ensure that any reforms did not undermine the overall fairness of the trial process, the Cabinet Secretary said that there was a “compelling case” to remove children from the courtroom setting, and indicated that reform was a personal priority.²⁹⁵ The Lord Advocate expressed similar views, telling the Committee that there was an opportunity to find ways of capturing evidence from child witnesses “as early as possible and in advance of a trial”.²⁹⁶
247. The Committee also notes evidence that the effect of the prosecution deciding *not* to take evidence from a child can be damaging for the child.²⁹⁷ If there is sometimes a reluctance on the part of prosecutors to take evidence from children in a courtroom setting for fear that it may re-traumatise them, which might in turn mean that important evidence is not led, and that charges are dropped, then that in itself is grounds to reconsider current practice.

248. The Committee welcomes ongoing work under the Evidence and Procedure Review to reform the way in which children give evidence during a trial but repeats its earlier concern that there is no publication date for the Review's findings.

249. The Committee notes that the aspiration is to make taking evidence from children in a courtroom setting the exception rather than the norm. Any reforms must continue to allow the defence to challenge and test the evidence. The Committee looks forwards to considering detailed proposals as they emerge.

Victim Information and Advice Service

250. The legislative reforms outlined above were reflective of a general view that there needed to be a change in the way the system dealt with witnesses in

general and victims in particular. A number of cases around the millennium were felt to have reflected badly on the Scottish criminal justice system and its duty of care towards victims and witnesses.²⁹⁸ This was one of the reasons for the setting up a body within the COPFS dedicated entirely to helping victims; the Victim Information and Advice (VIA) service. VIA was set up in 2002. Its role has evolved and expanded as the COPFS's legal duties to victims have increased.

What VIA does

251. The COPFS explains that VIA has two main roles, relating to advice or information and special measures. Its role is—

” to seek to assist victims by providing them, through dedicated staff who also operate as a point of contact, with information about the progress of their case as well as general information about the criminal justice system. [...] Since it was launched, our VIA staff have also taken on responsibility for applications for special measures under the Vulnerable Witnesses (Scotland) Act 2004 and the Victims and Witnesses (Scotland) Act 2014. They also now offer information to child victims and victims of crime in cases of domestic abuse, hate crime, sexual crime or where it is likely that a trial will involve a jury.²⁹⁹

Who the VIA service helps

252. VIA is not a comprehensive service for all victims of reported crime. VIA originally assisted only vulnerable witnesses in solemn cases. Nowadays, it offers assistance to victims in certain summary cases; principally those prioritised by way of the Lord Advocate's written guidance, for instance, victims of domestic abuse or stalking. VIA will also offer its assistance in any case involving children or vulnerable witnesses. VIA provides no assistance in respect of the approximately one third of all cases that call in the JP Court.

Third sector organisations and the VIA

253. In its evidence, the COPFS has repeatedly emphasised that VIA is not a victim support or counselling service, and does not aspire to be one, although it does provide information on where such services can be accessed.³⁰⁰

254. Third sector voluntary and charitable organisations play a key role helping victims navigate the prosecution process. Precisely because the COPFS is not “the complainer's lawyer”, their role in helping victims is crucial, although they do not normally offer legal advice. Support may include advice, counselling or non-legal advocacy, and the Committee notes evidence and testimony from individuals gratefully acknowledging the help these groups offered at difficult times.³⁰¹ The COPFS explained that VIA staff are trained to help victims make contact with the right victim support group.³⁰² A number of groups supporting victims provided evidence to the inquiry.

255. The Scottish Government provides around £5 million in funding annually to support these groups' work. The fund is administered by Victim Support Scotland (VSS).³⁰³ Significant additional funding amounting to £20 million in total has been provided over the last three years to support violence against women priorities.³⁰⁴
256. A letter received during the inquiry from the Moira Fund, which works with families of homicide victims, underlined that the financial situation of victim support groups can sometimes be precarious.³⁰⁵ The letter highlighted the serious depletion of the victim fund, provided by the Justice Department but administered by VSS, which assists families of murder victims. The Cabinet Secretary for Justice responded to the letter by announcing that he would supplement the fund to help ensure that it could continue to be used for the rest of the financial year.³⁰⁶

257. The Committee welcomes the additional funding that the Cabinet Secretary provided for the victim fund, which assists families of murder victims, in the 2016-17 financial year. The Committee asks the Scottish Government to keep the fund under review to ensure that it is adequate.

Issues raised in evidence

258. The Committee received a great deal of evidence during the inquiry in relation to the COPFS and its interaction with victims and witnesses. Some of this was specifically about the VIA service. Other evidence was about how prosecutors interacted with victims and witnesses in the course of taking a case to trial, or indeed not taking a case to trial. Some evidence, particularly from individuals, was less easily compartmentalised: it was effectively about victims' whole experience of the prosecution process, and the overall effect it had on them.

General views

259. A number of stakeholders commended the COPFS for having improved and professionalised the way it assisted victims, with the VIA service often singled out for having led this improvement.³⁰⁷ The Committee also notes the positive testimony it heard on inquiry-related visits about VIA and the willingness of its staff to go the extra mile for individuals. The Faculty of Advocates stated that—

” through applications for special measures, pre-court visits and the conduct of its officers, COPFS provides a very high level of professional support to witnesses and victims of crime. ADs [advocates depute] who have regular dealings with members of the Victim Information and Advice service ... recognise and appreciate the professionalism which they bring to this very important role.”³⁰⁸

260. Other evidence indicated that the COPFS still at times fell short of meeting the duty of care owed to victims and witnesses. Overall, the impression given was of

a service whose primary preoccupation was the demanding task of keeping the prosecution system ticking over, and avoiding major errors, in a time of limited resources. In that context, relationship-building with victims and witnesses could come across as a lesser priority; something to be squeezed in when time allowed. Evidence from Rape Crisis Scotland and Scottish Women's Aid indicated that there was a gap between the good intentions of the COPFS at strategic level and the way the COPFS interacted with victims and witnesses at an everyday level.³⁰⁹ The evidence of Families Outside, a third sector organisation working with the families of imprisoned people, commented that—

” The feedback we have received is that the COPFS fulfils its legal obligations and processes [towards victims and witnesses], but that the delays and frustrations and lack of communication along the way reflects a system lacking in consideration of the impact on individuals as human beings.³¹⁰

Individual victims' experiences

261. The Committee also received evidence and testimony from individual victims and witnesses of crime that portrayed the prosecution system in a poor light. Some specific criticisms made in this body of evidence are set out below. By its nature, such evidence is anecdotal. The Committee also notes that people whose experience of the prosecution process was positive, or as positive as can be hoped for, may not feel as motivated to communicate their experiences as those who had a bad experience. These caveats aside, the evidence was troubling and much of it is consistent with what third sector bodies told the Committee. It was sobering to read the submission of one charity, representing victims of domestic abuse that the “overwhelming response” of those they canvassed for views was that “the system traumatised them or increased the negative impact they experienced”.³¹¹ An individual from whom the Committee took private testimony told Members that at the end of their trial they had asked themselves whether they would have pursued the case in the first place, knowing the trauma it would cause. They concluded that they would not.³¹² The Committee appreciates that evidence of this nature was sometimes as much about victims' whole experience of the criminal justice system as it was about the role within that played by the COPFS.

Effect of delays and adjournments

262. A common theme of evidence was that, regardless of the dedication of VIA or of individual staff members, if cases were taking a very long time to get to trial then victims were being let down. Victims were also being let down if cases got to trial and were then repeatedly adjourned.³¹³ The Glasgow Bar Association commented that—

” ...in our in experience of hearing from witnesses and indeed accused persons the biggest source of frustration and anxiety is delays in the conclusion of trials and the lengthy waiting at court. To reiterate a common theme in this

submission - it is the lack of resources within the COPFS and in court accommodation for “standard” summary trials which is an ongoing concern.³¹⁴

263. Evidence portrayed victims and witnesses as sometimes bewildered and stressed by the complexities and inefficiencies of the process and what the evidence of the Scottish Police Federation described as “farcical levels of disturbance and inconvenience”.³¹⁵ In the case of vulnerable victims, delays increased the risk of relapses into self-harming behaviour. It was argued that there appeared to be no audit of the individual circumstances and frailties of victims and witnesses in determining what cases to prioritise.³¹⁶
264. Some evidence singled out “floating” trials (High Court trials scheduled for particular weeks but not set down to start on a particular day of that week) as a particular cause of frustration and stress.³¹⁷

COPFS response

265. In written evidence provided near the close of the inquiry, the Crown Agent noted evidence and testimony the Committee had received, commenting that—

” While these accounts include some direct criticism of COPFS which we regret and will seek to learn from, the treatment of victims and witnesses is a system wide issue.³¹⁸

266. The Cabinet Secretary’s evidence to the Committee was of a similar character, referring to “systemic challenges in our justice system” that affected the standard of service and care that victims and witnesses received. He said that he was open to proposals for improving the system, although it would be principally for the Lord Advocate to take change forward.³¹⁹ As discussed earlier, both the Cabinet Secretary and COPFS witnesses indicated that the Evidence and Procedure Review would help address some of the concerns raised in evidence, as they would help make the prosecution process more efficient and would reduce the need for witnesses to attend trials.

267. The Committee considers that the evidence taken from victims of crime set out serious failings by the criminal justice system, of which the COPFS is a key component, to provide the confidence necessary for these victims to participate in court proceedings. These failings including a lack of communications, misinformation, delays and adjournments, have resulted in some of these victims concluding that they would never have reported the crime in the first place. The Committee considers that this is unacceptable and must be addressed as a priority, and repeats its view that it is imperative that the COPFS finds more effective methods for passing on accurate up-to-date information about trials in real time to all stakeholders, victims especially. The Committee acknowledges that the reasons for adjournments in criminal trials are complex and that the COPFS bears only partial responsibility for them.

268. The Committee asks the COPFS to clarify the extent to which it takes into account the vulnerability of victims and witnesses, and the risk to them of a prolonged or delayed prosecution process, in determining the prioritisation of cases, in the light of evidence that delays in hearing cases can disproportionately damage the mental welfare of vulnerable adults.

Views on the Victim Information and Advice Service

269. As of January 2017, VIA had just over 100 staff. Around 40,000 victims were referred to VIA in 2014-15, an increase of 45% over the previous 7 years.³²⁰ Whilst exactly comparable measures are not being used, this may indicate that up to around a third of victims in trials receive help from VIA.³²¹ In relation to the use of special measures, in 2014-15, there were over 2100 notices or applications.
270. It was generally recognised in evidence that VIA was a small and stretched outfit, which therefore had to prioritise. There were certain categories of case (in practice, most standard summary cases) in relation to which it did not offer assistance. VSS noted that—
- ” Victims who do not fall under the auspices of VIA are not provided with proactive information on their case, such as whether it is going to court, until they receive a citation many months later (if at all).³²²
271. Even where VIA was helping victims, there were limits to what it could offer. A small but telling example was the testimony of a victim about being unable to find anyone to take their call in the late afternoon, when they had just received important information about their case, because the office was closed.³²³ The Committee also notes testimony that any support VIA offers to individual victims tends to end when the trial concludes.³²⁴ Victims often continue to need information and answers from the prosecution service when their case is over.
272. The COPFS said that VIA was a pro-active service: it identifies whom to contact with the help of prosecutors, rather than waiting for victims to approach it.³²⁵ However, VSS’s view was that VIA sometimes fell short in this area. In particular, victims were not always made aware of their legal rights under the 2014 Act.³²⁶ The Committee heard similar comments in person in the testimony from recent victims of crime: it was one thing to have legal rights, but another to be aware of them and to understand how to exercise them, particularly given that being a victim does not entitle an individual to access a lawyer.³²⁷ The Committee notes that the Inspector of Prosecutions intends to investigate victims’ awareness of the right to request a review of a decision not to prosecute under her current programme of work.³²⁸
273. VSS expressed the view that VIA had become less reliable. It linked this to a decision to disband VIA’s “national team” around 3 years ago, leading to

performance at local level becoming less consistent. VSS also considered that VIA at times seemed under-staffed and not always capable of carrying out its full range of responsibilities.³²⁹ VSS expressed the view that the reform of the law in relation to special measures in the 2014 Act had had unintended consequences—

” ... there has been a move away from the assessment of witnesses’ vulnerability and discussion with them around their needs for support and protection. The time and resources of VIA seem to be taken up with the additional administrative work that has resulted from the automatic entitlement to special measure for specific categories of witnesses. The result is that many witnesses are not being provided with the measures that they need to support and protect them from the trauma of giving evidence.³³⁰

Communication

274. Written evidence from the COPFS provided at the beginning of the inquiry informed the Committee that—

” Before the launch of VIA, victims did not receive proactive notification of progress with their case and did not have a dedicated point of contact. While prosecutors were previously able to provide such information, this was not done systematically and consistently.³³¹

275. Evidence raised questions as to whether the provision of communication about a case from the COPFS could yet be described as systematic or consistent.³³² Rape Crisis Scotland described a lack of information to victims about the progress of a case as one of the most common concerns that had been raised with them. It also said that, with many rape or sexual assault cases experiencing long delays, victims could go for months without hearing from the COPFS and were left wondering if their case had been dropped.³³³

276. Examples of shortcomings in communication provided to the Committee over the course of the inquiry included errors in relaying basic and important information, including that a charge had been changed to a less serious charge,³³⁴ or that there had been changes to bail conditions that had a direct impact on the victim.³³⁵ There were even instances of the victim being misinformed of the trial outcome.³³⁶ One submission referred to a “complete vacuum of information” about what was likely to happen at court and what the consequences of particular decisions would be. It added that information provided to victims about why trial dates were changed or cancelled was “absolutely non-existent”.³³⁷

277. It is difficult to know how representative such evidence is of the general experience of victims and witnesses but, at the very least, it amounts to a significant minority of views. It is also consistent with evidence discussed earlier in the report about other criminal justice stakeholders’ difficulties accessing information about individual cases.

278. Concerns were also expressed about the tone of communications. An example given was of a letter to a victim of abuse notifying the trial diet in highly formal language and informing her that non-attendance could be a contempt of court. The victim felt that this was an insensitive way for the COPFS to open communications with her.³³⁸ Another example was of a victim receiving a communication notifying them what offences the accused had been acquitted and convicted of by reference to the technical language of the charge, which the victim did not understand.³³⁹ It was argued that there was a tendency within the COPFS to over-estimate how much victims and witness understood the criminal justice system and the prosecution process in its communications.³⁴⁰

COPFS response

279. The Crown Agent said that some of the evidence the Committee had received reflected a misunderstanding of the role of the VIA service, such as that it was the victim's lawyer. He said that this underlined how important it was that the COPFS made clear to victims what its role was and how it would engage with them. However, he took the opportunity to state that he viewed the vast majority of the service VIA delivered as "excellent".³⁴¹ In relation to evidence and testimony indicating that VIA had not always communicated well with victims and witnesses or had made errors in its communications, the Crown Agent indicated that these were—



... the exception to the rule, but the mere fact that the exception is so significant means that it is worthy of serious reflection and further work. I fully accept that.³⁴²

280. The Crown Agent also indicated that aspects of the current law were not helpful, in that they effectively forced VIA to prioritise victims of certain types of crime rather than prioritise on the basis of the needs and vulnerabilities of individuals.³⁴³

281. The Committee recognises the valuable role played by the Victim Information and Advice Service, and that there has been praise for the contribution of VIA staff members in evidence. The Committee recognises that the COPFS's resources are finite and limited and prevent it providing as much assistance as it would like. At the same time, there are lessons for the COPFS as a whole to learn as to the way it sometimes communicates with victims of crime and with other prosecution witnesses.

282. Reforms under the Victims and Witnesses (Scotland) Act 2014 have significantly widened the duties owed to victims and witnesses and have been widely welcomed. The COPFS, in common with other public agencies, is still adjusting to these changes. The Committee is concerned by evidence appearing to indicate that some of the key rights secured by that legislation are not yet a reality for victims and witnesses in their journey through the

criminal justice system. The Committee asks the COPFS and Scottish Government to respond to this evidence, and to evidence that victims and witnesses are not always aware of their rights.

Special measures, and the physical environment of the court

283. Enabling vulnerable witnesses and children to give evidence by way of special measures is widely recognised as one area where the law has moved forward.³⁴⁴ Some evidence and testimony indicated that requests to make use of special measures were, however, not always well received, with the individual left feeling that they were a nuisance.³⁴⁵ Susan Gallagher of Victim Support Scotland told the Committee that victims did not always get the special measures they needed—

” People have told us that they were unable to give their best evidence because they were terrified. We have examples of people who were so distressed that they were unable to speak. They had expected to give evidence remotely via closed-circuit television but had ended up in court with the supporter and a screen because that was what was provided. They physically could not speak to give their evidence, and cases could have been dropped or adjourned because of that.³⁴⁶

284. The Committee was concerned by evidence that, when screens for giving evidence were provided, they were not adequate to give witnesses the security and reassurance they had expected.³⁴⁷ Evidence from the SCTS indicated that this had now been largely addressed.³⁴⁸
285. The Committee also heard more general concerns about the court setting contributing towards victims’ and witnesses’ feelings of stress, agitation or insecurity.³⁴⁹ Victims and witnesses are not always kept separate from the accused outwith the courtroom setting whilst a trial is ongoing and may well cross paths.³⁵⁰
286. In that these issues may ultimately reflect concern about the court estate, they are the responsibility of the SCTS. However, as the Lord Advocate acknowledged when he gave evidence to the Committee, there may be a role for the COPFS to play in examining the process of giving evidence from the victim’s perspective, and considering ways in which any discomfort could be mitigated.³⁵¹

287. The Committee welcomes the Lord Advocate’s acknowledgement that the COPFS might benefit from examining the process of giving evidence from the victim’s perspective in order to see whether it could be improved.

288. The Committee is concerned by evidence that vulnerable witnesses did not always obtain the special measures that they had requested and that where some special measures (for instance, screens) were provided, they were not

always adequate. Evidence that victims and witnesses did not always feel secure outwith the courtroom setting during the trial process is also concerning. The Committee notes that, as well as potentially affecting victims' and witnesses' mental welfare, this might affect the evidence they give, or in extreme cases lead them not to give evidence at all.

289. The Committee recommends that the COPFS carry out an audit of victims and witnesses entitled to special measures in order to determine (a) whether they are aware of their rights to ask for special measures, (b) whether reasonable requests for non-standard special measures are being met, and (c) the extent to which the provision of special measures actually assisted the individual in providing evidence and, if not, what lessons could be learned from this.
290. Under the Victims and Witnesses (Scotland) Act 2014, the COPFS is required to take reasonable steps to enable victims and their families to avoid the accused during a trial. The Committee seeks clarification from the COPFS as to how it exercises that duty in practice and whether it makes victims and their families aware of its existence.

Contact with victims by prosecutors before a trial

291. The common experience of the three recent victims of crime from whom the Committee took private testimony was of having only limited or fleeting contact with prosecutors before their trial.³⁵² In addition, the same fiscal might not work on the case as it progressed: it might be passed on to someone else if some other commitment got in the way. Overall, their view was that the Crown was not optimally prepared for the trial, and that mistakes were made, including basic errors of fact. More generally, a lack of pre-trial contact contributed to an impression of a prosecution service that was, from the victims' perspective, distant and distracted.
292. Some stakeholders expressed similar views.³⁵³ Scottish Women's Aid commented that—



It is crucial for the proper execution of the COPFS role, the preparation of their case and the presentation of that case before the court that prosecutors meet victims and witnesses, assess their needs in terms of providing evidence and ensure that they are supported to do so. This does not conflict with COPFS' independence as the impartial Crown prosecutor acting in the public interest. Indeed, it is very much in the public interest that the participation of victims and witnesses in the criminal justice process is supported, respected, valued and encouraged.³⁵⁴

Precognitions

293. This issue overlaps with evidence the Committee received on precognitions. Precognosing is the practice of taking a factual statement from witnesses before a trial is commenced. A precognition statement is not formal evidence but may be used by the prosecution as background information, in the first place to establish the strength of a case and secondly, if the prosecution proceeds, to assist in preparing for the trial.

294. A number of organisations expressed concern that the COPFS had discontinued or downgraded the taking of precognitions, except for the most serious cases and that this had been done, at least partly, as a cost-cutting measure.³⁵⁵ The Faculty of Advocates said that the COPFS's practice of employing experienced paralegals known as precognition officers (POs) had been—

” ... largely abandoned. Instead, far greater reliance is placed on statements taken by police officers at or around the time of the event. Accounts given in these circumstances may not be altogether reliable. More importantly, experienced POs provided an essential check at a later stage in the process when a better assessment can be made of the reliability of witnesses and the realistic prospects of securing a conviction.³⁵⁶

295. Derek Ogg QC, representing the Faculty, told the Committee that he perceived an overall decline in the quality of case preparation of which preparing precognitions was one vital aspect. He described precognition as one of the tools required in order to achieve the “deep penetration of a case” that was a general precondition to an effective prosecution.³⁵⁷

296. The Committee heard evidence that, as well as assisting victims and witnesses, increased use of precognitions might contribute towards the early agreement of evidence that, it was generally agreed, is key to increasing the system's overall efficiency.³⁵⁸

COPFS response

297. In his written response to the evidence led on precognitions, the Crown Agent differentiated between solemn and summary cases. He said that evidence alleging that the Crown had discontinued precognosing victims and witnesses in summary cases was based on a misunderstanding—

” ... there has never been a practice of precognition in our summary case preparation. The historic position in relation to precognition by the Crown reflected a situation in which the Crown had no obligation to disclose evidence to the accused, where it was assumed that the defence would also be precognosing witnesses, and where precognitions, by either party, could not be produced in evidence. The position today is quite different.³⁵⁹

298. In relation to solemn cases, the Crown Agent said that the practice had been discontinued in practically all cases except sexual offence cases because of a change in the law of disclosure. The COPFS had come to a view that in most cases, the disadvantages of precognition now outweighed the benefits.³⁶⁰ In this connection, the Committee notes evidence from Michael Meehan, of the Faculty of Advocates that advocates depute may be reluctant to discuss a case at length with a victim or witness before a trial, in case that discussion gives rise to an obligation to disclose particular evidence to the defence.³⁶¹
299. The Crown Agent told the Committee that the change in policy on relation to solemn precognitions was done for “positive reasons” relating to the need to make COPFS policy conform to the new law on disclosure to the defence, and not for financial reasons. He summarised the COPFS’s current policy as—

” ...not an abandonment of precognition; it is about more focused precognition where we think that that precognition will add value. For example, in serious sexual offending cases, it is highly likely, if not nearly always the case, that that individual would be precognosed.³⁶²

300. The Committee was concerned by evidence as to the lack of contact between victims and prosecutors during trial preparation, leading in some cases to a perception from victims that the Crown was not well prepared when it came to the trial. The Committee notes the explanation provided by the COPFS as to why, in the vast majority of cases, it is no longer considered appropriate to precognose victims and witnesses. However, the Committee also notes evidence that precognition by the Crown, amongst other things, may help evidence be agreed earlier, and thus help cases resolve more quickly, which is one of the main aims of the Evidence and Procedure Review. The Committee asks the COPFS to respond to this evidence.

The Thomson Review on victim care

301. In written evidence provided near the close of the inquiry, the Crown Agent said that the COPFS accepted that—

” ... there is a gap between the service which we can provide and the service which we would like to see victims receive from the system as a whole. It is for that reason that I am pleased to advise the Committee of the publication of the Review of Victim Care in the Justice Sector in Scotland on 11 January by the former Solicitor General for Scotland, Lesley Thomson QC, who has consulted widely and made recommendations which seek to address this gap. The report has been provided to the Justice Board. COPFS will fully support her recommendations and is committed to the necessary further work in this area.³⁶³

302. Dr Thomson's review was published³⁶⁴ as the Committee's evidence-taking was drawing to a close. There was therefore no opportunity to canvass views on it. However the Committee recognises the paper as a substantial contribution to the ongoing discussion over victims in the criminal justice system, and many of its findings echo the evidence that the Committee received. In the review, Dr Thomson praises VIA as "a body of considerable skill and expertise", often providing "an excellent service to eligible victims".³⁶⁵ However, the review also frankly acknowledges that victims' experience of the criminal justice system can be very poor, with victims sometimes left feeling "disappointed, empty and dissatisfied". At worst they may feel re-victimised and that the experience of the trial was worse than the crime itself.³⁶⁶ Some victims also receive very little direct support from public agencies in their journey through the criminal justice system.

303. The review concludes that change is much needed; in three areas—

- *legal changes*: the review audits the current legal framework in order to assess whether laws are operating as they should. It makes a number of specific observations, some of which, if implemented, would require amending legislation;
- *cultural changes*: changes to the way the justice system views victims. This includes ensuring that the COPFS and other organisations adopt practices to ensure that victims are made aware of their rights;
- *structural changes*: the review argues that there is a pressing need to simplify a complex and sometimes baffling network of public and third sector organisations and agencies speaking different languages to victims. It proposes a single point of contact or "one front door model" for all victims

The future of the VIA service

304. The Review poses an open question as to where the adoption of a "one front door model" would leave the VIA service. The Review notes that VIA is already under strain and estimates that full implementation of the 2014 Act is likely to lead to an additional 4000 referrals per annum to VIA, on top of the 45% increase over the previous seven years.

305. The Lord Advocate told the Committee that the "key point" he took from the Review was that it underlined the need for fresh thinking to identify who in the criminal justice system was best placed to deliver the assistance that victims need during their journey through the system.³⁶⁷ The Crown Agent said that the Thomson Review had highlighted that witnesses should "expect to get consistently more support than they currently receive". The question that the review had opened up for debate was as to whether it was the VIA service that was best placed to provide this.³⁶⁸

306. Evidence received over the course of this inquiry shows a divergence between the intentions of the COPFS and the experience of many victims. Victims can be re-traumatised by what can come across as a mechanistic process that does not always appear to have their interests at heart. Victims and witnesses are sometimes made to feel like an afterthought. This is a system-wide problem but the COPFS, as the key organisation within the prosecution process, bears its share of responsibility. Any comprehensive solution must also be system-wide.
307. The Committee notes Dr Lesley Thomson's Review of Victim Care in the Justice Sector in Scotland. Whilst welcoming the Review as a valuable contribution to the current debate as to how best to cater for victims within the prosecution process, the Committee considers that many of its conclusions have been voiced before but not acted upon.
308. The Committee requests a detailed response from the COPFS and the Scottish Government as to the main conclusions in the Review, including which recommendations they propose to accept, and what legislative reforms may be necessary in the light of this. The Committee further requests from the COPFS and Scottish Government a timetable for implementing recommendations in the Review. The Committee also seeks their views on the Review's proposal that victims should have access to a single point of contact providing advice and support during their journey through the criminal justice process.
309. The Committee notes that the number of referrals to the VIA service has risen sharply (by around 45% in seven years) and that the Thomson Review estimates an additional 4000 referrals per annum in future thanks to recent legislative reforms. The Committee considers that without additional resource for VIA, there will almost certainly be adverse consequences for its ability to work effectively.
310. The Committee calls for the COPFS to audit the work VIA currently undertakes in order to come to a view on where the main demands on its services come from and whether there are areas of unmet need.
311. The Committee makes these recommendations in the context of what it recognises as an ongoing debate as to the future role of the VIA service. The Committee considers that obtaining more information on VIA's current workload and on unmet need may help clarify next steps in relation to that debate.

Inspectorate of Prosecutions in Scotland

312. The call for evidence invited views on the Inspectorate of Prosecutions in Scotland, asking—

” 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?

313. The Inspectorate was set up in 2003, following an independent report³⁶⁹ into a high profile failed murder prosecution (the Chhokar case). One of the report’s recommendations was to establish a body charged with inspecting the COPFS in order to introduce “a measure of accountability, which is essential for public confidence”.³⁷⁰ As discussed earlier, the COPFS, although part of the Scottish Government, is independent of it, in terms of setting prosecution policy or deciding whether and how to prosecute particular crimes; these being determined solely by the Lord Advocate or under his authority. The then Scottish Executive accepted this recommendation, establishing the Inspectorate of Prosecution in Scotland in December 2003. The office of Inspector of Prosecution in Scotland was then established in statute under the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

314. The Committee is not aware of the Inspectorate previously having been subject to Parliamentary consideration (other than the brief and limited scrutiny it received during the passage of the Bill for the 2007 Act³⁷¹) and considered that the inquiry provided a good opportunity to invite views on its work.

Role and resourcing

315. The Inspectorate is headed by an Inspector of Prosecutions, appointed by the Lord Advocate. The Inspector is appointed “for such period as the Lord Advocate may determine” and may be reappointed.³⁷² The current Inspector, Michelle Macleod is serving her second three-year term.³⁷³ Current practice is for the Scottish Government to recruit under an advertised appointment process when there is a vacancy.

316. The current Inspector is financed for a four-day week. There are four other staff members: a personal assistant to the Inspector and three assistant inspectors, one of whom is part-time.³⁷⁴

317. The 2007 Act provides for the existence of an Inspector, not an Inspectorate. It states that, in carrying out his or her functions, the Inspector “is to act independently of any other person”.³⁷⁵ According to the Inspectorate itself, it is “part of the Scottish Government but independent from Crown Office and

Procurator Fiscal Service (COPFS)".³⁷⁶ Its budget is allocated by the Scottish Government, appearing under the Justice line. In 2010-11, the Inspectorate's budget was £350,000. It was reduced to £320,000 the following year where it has since remained.

Functions of the Inspector

318. Section 79(1) of the 2007 Act requires the Inspector to secure the inspection of the operation of the COPFS. The Inspectorate's written submission stated that, in so doing, the Inspector should "make recommendations that will contribute to the improvement of COPFS and enhance public confidence". The Lord Advocate may also require the Inspector to submit a report on any particular matter connected with the operation of the Service. In the exercise of these functions, the Inspector may require any person directly involved in the operation of the COPFS to provide her with information.³⁷⁷ The Inspector must also prepare an annual report on the exercise of her functions.³⁷⁸

319. The Inspectorate states that its approach to inspection is—

” to encourage an inclusive and participative process designed to secure improvement across the system, acting as an impartial and professional ‘critical friend’. In addition to identifying areas for improvement it is important to highlight and promote examples of good practice so that they can be adopted elsewhere. The work of the Inspectorate must be relevant to the issues impacting on our communities. In selecting topics for inspection, the Inspectorate adopts an objective risk-based approach, informed by consultation with our stakeholders.³⁷⁹

320. Its submission to the inquiry added that—

” In times of budgetary constraint and rising public expectations, Inspectorates, including IPS, play a pivotal role in identifying opportunities for efficiencies and service improvement, promoting public confidence in the quality of public services and facilitating and driving forward improvement agendas.

321. When the Inspector gave evidence, she told the Committee that she tended to prioritise work based on perceived risk to the COPFS, in terms of reputational damage, resourcing, and the effective prosecution of crime.³⁸⁰ She said it was not her practice to “stray into policy areas”, giving prosecution of domestic abuse cases as an example.³⁸¹

322. Since its establishment, the Inspectorate has published 26 thematic reports on diverse aspects of the prosecution service, around a quarter of which have led to follow-up reports.³⁸²

Current work

323. The Inspectorate's submission to the inquiry (provided in October 2016) explained that—

” Taking account of the increase in complex historic sexual abuse cases and that cases involving sexual crimes now represent the majority of the COPFS High Court workload, we have recently embarked on a review of the investigation and prosecution of sexual crimes.

324. The submission explained that proposals for a joint inspection with HM Inspector of Constabulary Scotland on how offenders with mental health problems are dealt with in the criminal justice system had to be shelved because of difficulties in identifying a cohort of suitable respondents who could be tracked through the system.

325. During the lifetime of the inquiry, the Inspectorate concluded a follow-up investigation in the management of time limits in solemn cases. The Inspector told the Committee that she is also currently looking at the right of victims to request a review of a decision not to prosecute.³⁸³

Evidence received

326. The Committee did not receive many substantive responses in relation to the question it posed on the Inspectorate. A number of stakeholders indicated that they had not heard of the Inspectorate. A roughly equivalent number stated that they had heard of the Inspectorate but had little or no awareness of its work, and therefore no comment.³⁸⁴ Overall, the Committee received practically no evidence commenting on the Inspectorate's output. Evidence from the Glasgow Bar Association was fairly characteristic—

” Our ability to comment upon this question is very limited as it does not appear that there is any real awareness amongst our members of the work of the Inspectorate of Prosecution in Scotland.³⁸⁵

327. This puts the Committee at a disadvantage in attempting to come to a view as to the extent to which the Inspectorate's work has actually made a difference. The COPFS itself did not take the opportunity during the inquiry to express a view as to whether it had found the Inspectorate's reports helpful.

328. The Cabinet Secretary told the Committee that he was satisfied that the Inspectorate had “a valuable and important role” and provided a positive service that added value.³⁸⁶

Independence of the Inspectorate

329. Some evidence queried the independence of the Inspectorate. As noted earlier, the Inspector is appointed by the Lord Advocate. In addition, two of the

Inspector's three assistant inspectors are fiscals depute seconded from the COPFS. (The Inspector herself is a former COPFS prosecutor and her personal assistant is also formerly of the COPFS.). The Committee understands that it has been common practice since the Inspectorate was set up for assistant inspectors to have been fiscals on secondment and for them to return to the COPFS after their secondment has ended. When the Inspector gave evidence before the Committee, she was accompanied by one of her assistant inspectors who confirmed that she expected to return to the service when her two-year secondment ended.³⁸⁷

330. Some evidence was critical of these arrangements.³⁸⁸ Evidence from a former fiscal commented—

” How cynical does one have to be to be concerned that a seconded person, perhaps hoping to return to the main organisation on promotion, would be willing to actively challenge that organisation?³⁸⁹

331. The Law Society argued that—

” Transparency could be improved if the inspectorate team comprised of a more representative group of non-solicitor and solicitor members, which would reinforce the independence which the statute requires.³⁹⁰

332. The Society also had observations as to the extent of the Lord Advocate's potential influence over the Inspectorate. It noted that under the 2007 Act the Lord Advocate has the power to ask the Inspectorate to report on matters of his choosing. He must also be given the opportunity to comment on any draft annual report. In addition—

” The Lord Advocate is under no statutory duty to consider the HMCIPS [ie the Inspectorate³⁹¹] recommendations. Although the legislation requires that HMCIPS is to remain independent from COPFS, given the Lord Advocate has statutory power to appoint the Inspector and determine matters for investigation improvements could be made to enhance that independence.³⁹²

Cabinet Secretary's view

333. When the Cabinet Secretary gave evidence, he was invited to comment on evidence questioning the independence of the Inspectorate, or the perception of its independence. He said that he understood the concerns but that, in his view, there were appropriate safeguards in the legislation. The Cabinet Secretary commented that the “pool of individuals with the right expertise” to serve as inspectors was always likely to be limited but that he would be open to considering alternative approaches to staffing the Inspectorate, provided these ensured that the Inspectorate retained the skillset it needed to carry out effective inspections.³⁹³

Evidence of the Inspector of Prosecutions

334. When the Inspector gave evidence to the Committee, she said that, having considered the evidence the Committee had received, she accepted there was an issue with the Inspectorate's profile and visibility and would be looking for ways to raise it, mentioning increased communication on social media as one option under consideration.³⁹⁴ However, she said she was satisfied that the Inspectorate did engage with stakeholders to an appropriate degree in the course of undertaking its inspections and preparing its reports.³⁹⁵

335. The Inspector defended the practice of drawing assistant prosecutors primarily from the COPFS. She said that staff do not have to be drawn from the COPFS, and not all had been, but that employing career prosecutors—

” ... brings direct benefits, as they have the legal knowledge of the prosecution service. When we are looking at a subject such as the management of time limits, which is technical and legalistic and raises a lot of legal points, it is helpful to have colleagues in the team who have a prosecution background.”³⁹⁶

336. In addition, ex-COPFS staff would know how to interrogate the three different information technology systems used in the service in the way that outsiders would not.³⁹⁷ The Inspector said that current practice in terms of staff recruitment “is not fixed in stone”.³⁹⁸

337. In relation to the practicalities of her working relationship with the COPFS, the Inspector clarified that she had no statutory power to ensure that any recommendations in her reports were implemented. However, she said that she had had “no difficulty” in getting the COPFS to accept recommendations she had made in her four substantive reports, which was “probably not surprising given that we both want to improve the service.”³⁹⁹

338. The Inspector is under a statutory obligation to share drafts of her annual reports with the Lord Advocate to allow him to comment on them. The Inspector told the Committee that this had not compromised her independence in principle: the Lord Advocate had never asked her to remove anything in her three annual reports, which in any case, were “not particularly controversial”. She clarified that it was her practice to share drafts of substantive reports with “key players” and with the COPFS; the latter for comments on factual accuracy only.⁴⁰⁰ The Inspector said that—

” ...there is no suggestion of anyone influencing or changing any of my recommendations or findings; that has never happened.”⁴⁰¹

339. The Inspector said that, whilst it is the Lord Advocate that appoints the Inspector, this follows an appointment process that is “open and transparent, involving assessment and an interview. There is no formal requirement that the Inspector be a former COPFS employee.”⁴⁰²

340. The Inspectorate of Prosecutions in Scotland has an important role to play in ensuring the effectiveness and efficiency of the prosecution system and the Committee supports its work. The inquiry has laid bare the Inspectorate's very low public profile, even amongst criminal justice stakeholders. Whilst the Inspectorate is not a public-facing complaints-handling organisation or an advocacy body, it requires the input of informed experts and stakeholders to add value to its scrutiny work.
341. The Committee is therefore concerned at the lack of stakeholder awareness of the Inspectorate's output, given that its reports have touched on matters of genuine public interest.
342. The Committee notes the Inspectorate's assurances that it recognises its low profile as a concern and proposes to address it. The Committee requests an update from the Inspectorate as to what work is planned and would welcome the Scottish Government's view on what the Inspectorate proposes.
343. The Committee notes that it helps the Inspectorate to have ex-COPFS staff working on its investigations. They bring with them a wealth of knowledge about how the service works that is likely to add to the quality of its output. However, the Committee considers that the Inspectorate has not currently got the balance quite right. This applies particularly to the practice of recruiting most assistant inspectors from the COPFS on secondment.
344. The Committee notes the Inspector's assurances that she has never been influenced to change a recommendation in her reports. However, perceptions matter, and current arrangements contribute to a perception that the Inspectorate may not be as independent from the COPFS as it was intended to be. The Committee requests the Scottish Government to reflect on these views and to respond to them.
345. Finally, the Committee asks the Inspector to take into account conclusions and recommendations about the COPFS made elsewhere in this report when considering her next programme of inspections.

Recommendations

Resources and funding of the COPFS

The COPFS, in common with agencies across the public sector, has faced significant challenges as a result of a prolonged period of flat-lining budgets. This looks set to continue into 2017-18. The Committee notes the Lord Advocate's remarks that he considered his 2017-18 budget to be a "sound settlement" that will enable him to continue to provide a fundamentally effective prosecution service.

For the most part, the COPFS has coped in this tougher financial environment as well as can be expected, and its frontline staff deserve credit and recognition for their resilience under sometimes difficult circumstances. It would be unreasonable for the COPFS to continue to rely on the resilience of its staff indefinitely. The Committee considers that change is necessary before the risks that are undoubtedly embedded in the prosecution system, as presently constituted, begin to crystallise.

The Committee agrees with evidence from the COPFS and the Cabinet Secretary for Justice that more efficient ways need to be found to manage the whole prosecution process. Whilst the COPFS is the single most important organisation involved in managing the prosecution process, it cannot achieve this reform on its own. The Committee notes that it is expected that change will be primarily driven by the cross-agency Justice Board, on which the COPFS is represented, and expects the Lord Advocate and Cabinet Secretary to provide the necessary backing for the Board as it proceeds in implementing key elements of the Justice Strategy

The Lord Advocate and Crown Agent have acknowledged in evidence that there is a need to address staffing concerns dating back several years. Above average numbers of staff on short-term contracts, on sick leave, or in long-term temporary promotions are danger signs. The Committee is pleased the current leadership appears to recognise this, to be listening to staff, and to be looking for ways to deal with these issues. The Committee will continue to maintain a watching brief on this issue and requests an update on staffing matters from the COPFS when it responds to this report.

In relations to matters such as job satisfaction and work-life balance, returns from staff surveys in recent years have been concerning. The Committee notes some evidence that, in these areas, the organisation might now be making progress. The Committee also notes evidence and public statements from the Lord Advocate that he has confidence in the judgment of his prosecutors and trusts them to take decisions in his name. However, it is still very early days and, in this context, indications that the COPFS may have to shed around 30 staff in 2017-18

to deal with real-terms budget cuts are worrying. It is difficult to see, given the current pressures staff are under, how further losses are sustainable. The Committee seeks clarification from the COPFS on the operational rationale for job losses and where they will fall.

The Committee also warns the COPFS against an over-reliance on digital solutions to deliver greater efficiencies.

Efficiency of the prosecution service

“Churn” - adjournment and delay of cases scheduled for trial – is one of the main sources of frustration for anyone having to engage with the prosecution process. The Committee accepts that a degree of churn is inevitable and unavoidable, but evidence received over the inquiry indicates that it remains unacceptably high.

The Committee accepts that the problem of delay and inefficiency in the prosecution process cannot be solved by the COPFS acting on its own. The Committee also accepts that churn is a part-consequence of the COPFS’s limited staffing resources, but calls on the COPFS to find methods of mitigating it. For instance, it should be within the capacity of the COPFS to develop more efficient and effective means of notifying those whose attendance is no longer required at a trial. The Committee asks the COPFS and the Scottish Government to take this forward within the Justice Digital Strategy.

The Committee notes evidence that 80% of Crown motions to adjourn arise because of the non-attendance of witnesses. Giving evidence in a trial is a civic duty and failure to do so can be deemed a contempt of court. The Committee accepts that there can be understandable reasons why witnesses do not attend a hearing, but seeks clarification from COPFS and Scottish Government as to: what measures are in place to encourage and, if necessary, ensure witness attendance; the extent to which these measures are being used; and whether alternative approaches are being considered over and above whatever may emerge in due course from the Evidence and Procedure Review.

No blame can be attached to witnesses for non-attendance when they have not in fact been cited to attend court. The Committee is concerned by evidence that the process is sometimes unreliable. The Committee asks the Scottish Government, COPFS and SCTS whether it accepts this evidence and, if so, what measures are being considered to address this, including for instance, the Sheriffs’ Association suggestion of a dedicated COPFS unit to issue citations.

Proposals set out in the Evidence and Procedure Review and the Justice Digital Strategy are welcome and, in some cases, long overdue. Aspects of current criminal law procedure could rightly be described as archaic. The Committee notes the potential for considerable savings to be made if far fewer witnesses are required to attend court and are able to give their evidence in other ways.

However, the Committee notes with concern that the timetable for implementation of some aspects of the Digital Strategy has slipped, with some targets already missed. The Committee further notes that there appears to be no public timetable for implementing the Evidence and Procedure Review.

The Committee asks for a progress report from the Scottish Government in respect of each main element of the Review and the Strategy, setting out the timescale, the anticipated effect on the prosecution process, and where possible, the projected cost saving in relation to each such element.

The Committee also asks for an update from the Scottish Government as to what legislative changes it envisages may be required to unlock the full potential of the Evidence and Procedure Review and the Justice Digital Strategy, and what plans it has in respect of these.

The Committee seeks further information from the Scottish Government as to how proposals to encourage increased judicial case management in the context of criminal proceedings will be progressed and what additional support, if any (eg training), it envisages the judiciary may require in this modified role.

The Committee also seeks further information from the Scottish Government as to whether additional funding will be required to fully implement the Digital Strategy and the Evidence and Procedure Review and, if so, whether these have been costed and what proportion of these costs fall on the COPFS.

Given acknowledged difficulties with the delivery of major IT projects in the public sector, the Committee is concerned that there should not be an over-reliance on information technology to drive reform in the criminal justice system.

Effectiveness of the prosecution service

The Committee agrees with the Lord Advocate that the COPFS is, overall, “effective, rigorous, fair and independent” in the prosecution of crime. The evidence received indicates that, in general, Scotland is fundamentally well served by the COPFS in its core role as public prosecutor. However, the same evidence also makes clear that there should be no room for complacency and that the various shortcomings stakeholders have identified must be addressed.

The Committee acknowledges that the criminal justice system has not always prioritised domestic abuse as it should have or treated it with the seriousness it deserves. It was necessary for a clear message to be sent by public agencies working in the system that domestic abuse is unacceptable and would be tackled robustly, in order to give victims confidence that their case would be taken seriously. The COPFS/Police Scotland Joint Protocol on domestic violence has played an important role in that process. The Committee notes the differing views it has received during this inquiry as to the COPFS’s application of the protocol,

notes the Lord Advocate's response to it, and asks the COPFS and the Scottish Government to reflect further on the views that the Committee heard.

The Committee calls on the COPFS and Scottish Government to note evidence as to the quality and consistency of prosecution of those summary cases in relation to which special considerations do not apply by way of Lord Advocate's guidelines to prosecutors or in the Joint Protocol on domestic abuse. Such cases include instances of antisocial behaviour, crimes of dishonesty or less serious violent crimes. The evidence suggests that these are sometimes under-prioritised.

The Committee acknowledges the COPFS's evidence that it intends to build stronger relationships with third sector stakeholders in the prosecution of wildlife or environmental crime. The Committee asks the COPFS to respond to views heard in evidence that recommendations in the Scottish Government's 2008 report *Natural Justice*, particularly in relation to post-prosecution debriefings, have not been fully implemented, and to set out its plans to address this.

The Committee is concerned by evidence of very low prosecution rates for failure to hold employer's liability insurance, noting that the consequences of failing to be properly insured can be devastating for individuals and families. The Committee welcomes the COPFS's commitment to explore the reasons behind the low number of referrals with relevant reporting agencies and requests an update from the COPFS.

The Committee seeks the COPFS's view on whether there is merit in recruiting locum prosecutors to prosecute High Court cases turning on complex and specialist aspects of criminal law such as corporate fraud or health and safety breaches and, if so, whether this is part of its current practice.

The Committee is concerned by evidence that the courts are sometimes being asked to take decisions on bail without access to the full range of relevant information. This may lead to decisions being made that are not necessarily in the public interest, for instance to refuse bail on the basis of the accused's homelessness. Whilst the safety of the public and the integrity of the prosecution process must be the paramount considerations, the public interest is not served by individuals being remanded when more suitable alternatives may be available. The Committee asks the COPFS and Scottish Government, on behalf of the Scottish Prison Service, to respond to this evidence.

The Committee notes the COPFS's view that a drive towards increased centralisation and specialisation is likely to have helped it become a more efficient and professional organisation. The setting up of specialist prosecution units (for instance in relation to sexual offences) has been broadly welcomed. However, evidence has made clear that some trade-offs have been involved. It has been concerning to note evidence that local fiscals may sometimes find themselves running cases against their own professional judgment. The Committee also

notes views that increased centralisation may have had an effect on morale and job satisfaction in local offices.

The Committee seeks clarification from the COPFS that consideration of the autonomy and decision-making capacity of local fiscals is being taken forward in its current “Fair Futures” programme being developed in consultation with its staff.

The Committee notes views that the centralisation of case marking has led to an erosion of knowledge as to the availability of local schemes and programmes where case markers are considering alternatives to prosecution. The Committee asks the Scottish Government to consider whether, if these perceptions are valid, Community Justice Scotland could be invited to address them in its ongoing work to develop a new model for community justice delivery.

More generally, the Committee asks the COPFS and Scottish Government as to what monitoring there is of the effectiveness of diversion from prosecution and whether and how the results of that monitoring are fed back to the COPFS for continuous improvement purposes.

Victims and witnesses and the COPFS

The Committee supports the principle that the COPFS prosecutes in the public interest and not directly in the interests of individual victims of crime: it is not “the victim’s lawyer”. The Committee understands that this may sometimes lead to difficult decisions being made that victims find painful. However, the Committee considers that the principle is key to protecting the independence and integrity of the prosecution service.

The Committee considers that there is no inherent contradiction between putting the public interest first during the prosecution process and putting victim care at the heart of criminal justice system. In particular, victims have a right to be listened to and to be treated with respect and sensitivity. Their views matter and they should be consulted, whenever possible, at appropriate points in the prosecution process.

The Committee considers that an effective, efficient and fair COPFS is in everyone’s interests; accused, victims and witnesses alike. The Committee is therefore concerned by evidence that a lack of preparation time means that time limits in solemn trials are being “routinely” exceeded and seeks the COPFS’s response.

The Committee also asks the COPFS to respond to evidence that its general policy is not to seek the withdrawal of warrants for arrest of an accused for non-attendance, even where there may be exculpatory or mitigating factors. The Committee accepts that non-appearance for a court hearing is a serious matter but asks the COPFS to respond to concerns that, if this is its policy, it may impact disproportionately on vulnerable people.

The Committee asks the COPFS and Scottish Government to clarify what information (if any) public agencies must provide to families and dependents of accused people and what measures are in place to ensure that the information is provided. The Committee seeks clarification from the COPFS and Scottish Government as to what measures are in place to ensure that family members or vulnerable adults accused or convicted of a crime are contacted and notified.

The Committee considers that the safety and mental welfare of victims, balanced against the accused's right to a fair trial, should be at the forefront of consideration during the prosecution process. The Committee asks the COPFS and Scottish Government to confirm whether it is their understanding that Victims and Witnesses (Scotland) Act 2014 imposes legal duties on the COPFS, and other agencies, in relation to the hostile cross-examination of witnesses during a criminal trial and, if so, to clarify what practices and policies are in place to ensure that relevant legal requirements are met.

The Committee welcomes the Victims' Code for Scotland and considers that the pamphlet should be available to all victims at their first point of contact with the criminal justice system. The Committee seeks clarification from the COPFS and Scottish Government as to current practices in relation to making the Code available.

The Committee welcomes ongoing work under the Evidence and Procedure Review to reform the way in which children give evidence during a trial but repeats its earlier concern that there is no publication date for the review's findings.

The Committee notes that the aspiration is to make taking evidence from children in a courtroom setting the exception rather than the norm. Any reforms must continue to allow the defence to challenge and test the evidence. The Committee looks forwards to considering detailed proposals as they emerge.

The Committee welcomes the additional funding that the Cabinet Secretary provided for the victim fund, which assists families of murder victims, in the 2016-17 financial year. The Committee asks the Scottish Government to keep the fund under review to ensure that it is adequate.

The Committee considers that the evidence taken from victims of crime set out serious failings by the criminal justice system, of which the COPFS is a key component, to provide the confidence necessary for these victims to participate in court proceedings. These failings including a lack of communications, misinformation, delays and adjournments, have resulted in some of these victims concluding that they would never have reported the crime in the first place. The Committee considers that this is unacceptable and must be addressed as a priority, and repeats its view that it is imperative that the COPFS finds more effective methods for passing on accurate up-to-date information about trials in real time to all stakeholders, victims especially. The Committee acknowledges

that the reasons for adjournments in criminal trials are complex and that the COPFS bears only partial responsibility for them.

The Committee asks the COPFS to clarify the extent to which it takes into account the vulnerability of victims and witnesses, and the risk to them of a prolonged or delayed prosecution process, in determining the prioritisation of cases, in the light of evidence that delays in hearing cases can disproportionately damage the mental welfare of vulnerable adults.

The Committee recognises the valuable role played by the Victim Information and Advice Service, and that there has been praise for the contribution of VIA staff members in evidence. The Committee recognises that the COPFS's resources are finite and limited and prevent it providing as much assistance as it would like. At the same time, there are lessons for the COPFS as a whole to learn as to the way it sometimes communicates with victims of crime and with other prosecution witnesses.

Reforms under the Victims and Witnesses (Scotland) Act 2014 have significantly widened the duties owed to victims and witnesses and have been widely welcomed. The COPFS, in common with other public agencies, is still adjusting to these changes. The Committee is concerned by evidence appearing to indicate that some of the key rights secured by that legislation are not yet a reality for victims and witnesses in their journey through the criminal justice system. The Committee asks the COPFS and Scottish Government to respond to this evidence, and to evidence that victims and witnesses are not always aware of their rights.

The Committee welcomes the Lord Advocate's acknowledgement that the COPFS might benefit from examining the process of giving evidence from the victim's perspective in order to see whether it could be improved.

The Committee is concerned by evidence that vulnerable witnesses did not always obtain the special measures that they had requested and that where some special measures (for instance, screens) were provided, they were not always adequate. Evidence that victims and witnesses did not always feel secure outwith the courtroom setting during the trial process is also concerning. The Committee notes that, as well as potentially affecting victims' and witnesses' mental welfare, this might affect the evidence they give, or in extreme cases lead them not to give evidence at all.

The Committee recommends that the COPFS carry out an audit of victims and witnesses entitled to special measures in order to determine (a) whether they are aware of their rights to ask for special measures, (b) whether reasonable requests for non-standard special measures are being met, and (c) the extent to which the provision of special measures actually assisted the individual in providing evidence and, if not, what lessons could be learned from this.

Under the Victims and Witnesses (Scotland) Act 2014, the COPFS is required to take reasonable steps to enable victims and their families to avoid the accused during a trial. The Committee seeks clarification from the COPFS as to how it exercises that duty in practice and whether it makes victims and their families aware of its existence.

The Committee was concerned by evidence as to the lack of contact between victims and prosecutors during trial preparation, leading in some cases to a perception from victims that the Crown was not well prepared when it came to the trial. The Committee notes the explanation provided by the COPFS as to why, in the vast majority of cases, it is no longer considered appropriate to precognose victims and witnesses. However, the Committee also notes evidence that precognition by the Crown, amongst other things, may help evidence be agreed earlier, and thus help cases resolve more quickly, which is one of the main aims of the Evidence and Procedure Review. The Committee asks the COPFS to respond to this evidence.

Evidence received over the course of this inquiry shows a divergence between the intentions of the COPFS and the experience of many victims. Victims can be re-traumatised by what can come across as a mechanistic process that does not always appear to have their interests at heart. Victims and witnesses are sometimes made to feel like an afterthought. This is a system-wide problem but the COPFS, as the key organisation within the prosecution process, bears its share of responsibility. Any comprehensive solution must also be system-wide.

The Committee notes Dr Lesley Thomson's Review of Victim Care in the Justice Sector in Scotland. Whilst welcoming the Review as a valuable contribution to the current debate as to how best to cater for victims within the prosecution process, the Committee considers that many of its conclusions have been voiced before but not acted upon.

The Committee requests a detailed response from the COPFS and the Scottish Government as to the main conclusions in the Review, including which recommendations they propose to accept, and what legislative reforms may be necessary in the light of this. The Committee further requests from the COPFS and Scottish Government a timetable for implementing recommendations in the Review. The Committee also seeks their views on the Review's proposal that victims should have access to a single point of contact providing advice and support during their journey through the criminal justice process.

The Committee notes that the number of referrals to the VIA service has risen sharply (by around 45% in seven years) and that the Thomson Review estimates an additional 4000 referrals per annum in future thanks to recent legislative reforms. The Committee considers that without additional resource for VIA, there will almost certainly be adverse consequences for its ability to work effectively.

The Committee calls for the COPFS to audit the work VIA currently undertakes in order to come to a view on where the main demands on its services come from and whether there are areas of unmet need.

The Committee makes these recommendations in the context of what it recognises as an ongoing debate as to the future role of the VIA service. The Committee considers that obtaining more information on VIA's current workload and on unmet need may help clarify next steps in relation to that debate.

The Inspectorate of Prosecutions

The Inspectorate of Prosecutions in Scotland has an important role to play in ensuring the effectiveness and efficiency of the prosecution system and the Committee supports its work. The inquiry has laid bare the Inspectorate's very low public profile, even amongst criminal justice stakeholders. Whilst the Inspectorate is not a public-facing complaints-handling organisation or an advocacy body, it requires the input of informed experts and stakeholders to add value to its scrutiny work.

The Committee is therefore concerned at the lack of stakeholder awareness of the Inspectorate's output, given that its reports have touched on matters of genuine public interest.

The Committee notes the Inspectorate's assurances that it recognises its low profile as a concern and proposes to address it. The Committee requests an update from the Inspectorate as to what work is planned and would welcome the Scottish Government's view on what the Inspectorate proposes.

The Committee notes that it helps the Inspectorate to have ex-COPFS staff working on its investigations. They bring with them a wealth of knowledge about how the service works that is likely to add to the quality of its output. However, the Committee considers that the Inspectorate has not currently got the balance quite right. This applies particularly to the practice of recruiting most assistant inspectors from the COPFS on secondment.

The Committee notes the Inspector's assurances that she has never been influenced to change a recommendation in her reports. However, perceptions matter, and current arrangements contribute to a perception that the Inspectorate may not be as independent from the COPFS as it was intended to be. The Committee requests the Scottish Government to reflect on these views and to respond to them.

Finally, the Committee asks the Inspector to take into account conclusions and recommendations about the COPFS made elsewhere in this report when considering her next programme of inspections.

ANNEXE A

Extracts from the minutes of the Justice Committee

3rd Meeting, 2016 (Session 5) Tuesday 6 September 2016

Work programme (in private): The Committee considered its work programme and agreed (a) to launch an inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service, to undertake a fact-finding visit to the Lord Advocate's office as part of that inquiry, and to further consider its approach to the inquiry at its next meeting; [. . .]

4th Meeting, 2016 (Session 5) Tuesday 13 September 2016

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (in private): The Committee agreed an initial list of witnesses for its first evidence session of the inquiry.

6th Meeting, 2016 (Session 5) Tuesday 4 October 2016

Work programme (in private): The Committee considered its work programme and agreed (a) to undertake a fact-finding visit to Hamilton Sheriff Court as part of its inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service; [. . .]

7th Meeting, 2016 (Session 5) Tuesday 25 October 2016

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service: The Committee took evidence from—

Sandy Brindley, National Co-ordinator, Rape Crisis Scotland;
Tom Halpin, Chief Executive, Safeguarding Communities - Reducing Offending (Sacro);
Marsha Scott, Chief Executive, Scottish Women's Aid;
Susan Gallagher, Chief Executive, Victim Support Scotland;
Liam McAllister, President, Aberdeen Bar Association;
Stephen Mannifield, President, Edinburgh Bar Association;
Lindsey McPhie, President, Glasgow Bar Association;
Michael Clancy, Director of Law Reform, Law Society of Scotland.

Ben Macpherson declared an interest as a non-practising member of the Law Society of Scotland. Stewart Stevenson declared an interest as the sponsor of Michael Clancy's parliamentary pass.

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (in private): The Committee agreed potential witnesses for its inquiry.

8th Meeting, 2016 (Session 5) Tuesday 1 November 2016

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service: The Committee took evidence from—

Liz Dahl, Chief Executive, Circle;
Steve Farrell, Lead Organiser for Scotland, Community;

Professor Nancy Loucks, Chief Executive, Families Outside;
Audrey Howard, Social Work Scotland.

Mary Fee indicated that she is the convener of the Cross-Party Group on Families Affected by Imprisonment and therefore works closely with Families Outside. Fulton MacGregor indicated that he is registered with the Scottish Social Services Council.

9th Meeting, 2016 (Session 5) Tuesday 15 November 2016

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service: The Committee took evidence from—

Chief Superintendent Gordon Crossan, President, Association of Scottish Police Superintendents;
Rachael Weir, Vice President, and Fiona Eadie, Secretary, Procurators Fiscal Society Section of the FDA;
Stephen Murray, Branch Executive Committee member, PCS Scotland;
Calum Steele, General Secretary, Scottish Police Federation;
Michael Meehan, Law Reform Committee member, and Derek Ogg QC, Faculty of Advocates.

Work programme (in private): The Committee considered its work programme, including considering further its approach to the scrutiny of the Scottish Government's Draft Budget 2017-18, and agreed (a) witnesses for its forthcoming evidence sessions on its inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service; [. . .]

10th Meeting, 2016 (Session 5) Tuesday 22 November 2016

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service: The Committee took evidence from—

John Little JP and Sam McEwan JP, Justices of the Peace, Sheriffdom of North Strathclyde;
Assistant Chief Constable Bernard Higgins, Operations and Justice, and Chief Superintendent Garry McEwan, Divisional Commander, Criminal Justice Services Division, Police Scotland;
Eric McQueen, Chief Executive, and Tim Barraclough, Chief Development and Innovation Officer, Scottish Courts and Tribunals Service.

Work programme (in private): The Committee considered its work programme and agreed (a) to request further information from witnesses in relation to its inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service; (b) witnesses for its forthcoming evidence sessions on this inquiry; (c) to undertake a fact-finding visit to Edinburgh Sheriff Court as part of this inquiry; [. . .]

11th Meeting, 2016 (Session 5) Tuesday 29 November 2016**Inquiry into the role and purpose of the Crown Office and Procurator****Fiscal Service:** The Committee took evidence from—

Ian Thomson, Head of Investigations Scotland, Royal Society for the Protection of Birds Scotland, representing Scottish Environment Link.

12th Meeting, 2016 (Session 5) Tuesday 13 December 2016**Inquiry into the role and purpose of the Crown Office and Procurator Fiscal****Service:** The Committee took evidence from—Gordon Dalyell, Scotland's representative on the National Executive Committee, Association of Personal Injury Lawyers;
Patrick McGuire, Partner, Thompsons Solicitors.**13th Meeting, 2016 (Session 5) Tuesday 20 December 2016****Inquiry into the role and purpose of the Crown Office and Procurator****Fiscal Service:** The Committee took evidence from—Michelle Macleod, HM Chief Inspector of Prosecution in Scotland;
Dawn Lewington, Assistant Inspector, HM Inspectorate of Prosecution in Scotland.**1st Meeting, 2017 (Session 5) Tuesday 10 January 2017****Inquiry into the role and purpose of the Crown Office and Procurator****Fiscal Service:** The Committee took evidence from—

Michael Matheson, Cabinet Secretary for Justice, and Neil Rennick, Director, Justice, Scottish Government.

2nd Meeting, 2017 (Session 5) Tuesday 17 January 2017**Inquiry into the role and purpose of the Crown Office and Procurator****Fiscal Service:** The Committee took evidence from—

Rt Hon James Wolffe QC, Lord Advocate, and David Harvie, Crown Agent and Chief Executive, Crown Office and Procurator Fiscal Service.

5th Meeting, 2017 (Session 5) Tuesday 7 February 2017**Inquiry into the role and purpose of the Crown Office and Procurator Fiscal****Service (in private):** The Committee considered a discussion paper on its inquiry.**6th Meeting, 2017 (Session 5) Tuesday 21 February 2017****Inquiry into the role and purpose of the Crown Office and Procurator Fiscal****Service (in private):** The Committee deferred consideration of a draft report to a future meeting.

7th Meeting, 2017 (Session 5) Tuesday 28 February 2017

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

Service (in private): The Committee deferred consideration of a draft report to a future meeting.

8th Meeting, 2017 (Session 5) Tuesday 7 March 2017

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

Service (in private): The Committee considered a draft report. Various changes were agreed to and the Committee agreed to continue its consideration at a future meeting.

9th Meeting, 2017 (Session 5) Thursday 9 March 2017

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

Fiscal Service (in private): The Committee continued its consideration of a draft report. Various changes were agreed to and the Committee agreed to continue its consideration at a future meeting.

11th Meeting, 2017 (Session 5) Tuesday 21 March 2017

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

Service (in private): The Committee continued consideration of a draft report. Various changes were agreed to and the Committee agreed to continue consideration at a future meeting.

12th Meeting, 2017 (Session 5) Thursday 23 March 2017

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

Service (in private): The Committee continued consideration of a draft report. Various changes were agreed to and the Committee agreed to continue consideration at a future meeting.

13th Meeting, 2017 (Session 5) Tuesday 28 March 2017

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

Fiscal Service (in private): The Committee continued consideration of a draft report. Various changes were agreed to and the Committee agreed to delegate to the Convener authority to approve the report for publication.

ANNEXE B

Notes of informal testimony concerning the Crown Office and Procurator Fiscal Service

[Note of meeting with victim X](#)

[Note of teleconference with victim Y](#)

[Note of meeting with victim Z](#)

[Note of meeting with two former employees of the Crown Office and Procurator Fiscal Service](#)

ANNEXE C

List of written evidence

[Aberdeen Bar Association](#)
[Action for a Safe and Accountable People's NHS](#)
[Anonymous 1](#)
[Anonymous 2](#)
[Association of Personal Injury Lawyers](#)
[Association of Scottish Police Superintendents](#)
[Boyle, James](#)
[British Medical Association Scotland](#)
[British Transport Police](#)
[Children and Young People's Commissioner Scotland](#)
[Church of Scotland Legal Questions Committee](#)
[Circle](#)
[Cooney, Dr Gary](#)
[Criminal Justice Voluntary Sector Forum](#)
[Crown Office and Procurator Fiscal Service](#)
[Crown Office and Procurator Fiscal Service \(supplementary submission\)](#)
[Crown Office and Procurator Fiscal Service \(supplementary submission\)](#)
[Cumming, Dr Robbie](#)
[Edinburgh Bar Association](#)
[Faculty of Advocates](#)
[Families Outside](#)
[Glasgow Bar Association](#)
[Grier, David](#)
[Harrison, Lynn](#)
[Henderson, Dr Bruce](#)
[Hingston, David](#)
[HM Revenue and Customs](#)
[Hutchon, David](#)
[Inspectorate of Prosecution in Scotland](#)
[Jamieson, Dr Robin](#)
[Jim Clark Motor Rally](#)
[Law Society of Scotland](#)
[LGBT Youth Scotland](#)
[MacLennan, Dr Stuart](#)
[McEwan, Sam JP](#)
[McEwan, Sam JP \(supplementary submission\)](#)
[Mercado, Sharon](#)
[Office of Rail and Road](#)
[PCS Scotland](#)
[Peter Low](#)
[Police Scotland](#)
[Procurators Fiscal Society Section of the FDA](#)
[Rape Crisis Scotland](#)
[Ross-shire Women's Aid](#)
[Royal Society for the Protection of Birds Scotland](#)
[Sacro](#)

[Sacro \(supplementary submission\)](#)
[Scottish Badgers](#)
[Scottish Borders Rape Crisis Centre](#)
[Scottish Council of Jewish Communities](#)
[Scottish Courts and Tribunals Service](#)
[Scottish Courts and Tribunals Service \(supplementary submission\)](#)
[Scottish Criminal Bar Association](#)
[Scottish Environment Link](#)
[Scottish Government](#)
[Scottish Justices Association](#)
[Scottish Legal Aid Board](#)
[Scottish Older People's Assembly](#)
[Scottish Police Federation](#)
[Scottish Society for the Prevention of Cruelty to Animals](#)
[Scottish Women's Aid](#)
[Sheridan, Margaret](#)
[Sheriffs' Association](#)
[Thompsons Solicitors](#)
[Victim Support Scotland](#)
[Victim Support Scotland \(supplementary submission\)](#)

¹ *Scottish Ministerial Code*, 2016 edition, paragraph 2.4

² Justice 2 Committee, 4th Report 2003 (Session 1), *Crown Office and Procurator Fiscal Service Inquiry*

³ <http://www.crownoffice.gov.uk/about-us/about-us>

⁴ There is scope in Scots law to bring a private prosecution but it has almost never been successfully exercised in modern times. The Lord Advocate must be asked for his “concurrence” as part of the process. The last case in which a private prosecution was allowed by the High Court without the Lord Advocate’s concurrence dates from 1909.

⁵ <http://www.copfs.gov.uk/about-us/about-us>

⁶ COPFS, supplementary written submission

⁷ COPFS Estate Strategy, February 2017, available at

<http://www.copfs.gov.uk/images/Documents/Publications/Strategies/COPFS%20Estate%20Strategy%2030JAN17.pdf>

⁸ David Harvie, COPFS, Official Report 20 December 2016, col 9

⁹ See further Justice Committee, 1st Report, 2017 (Session 5): Scottish Government’s Draft Budget 2017-18. available at

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/103257.aspx>

¹⁰ Michael Clancy, Law Society of Scotland, Official Report, 25 October, col 25

¹¹ Inquiries into Fatal Accidents and Sudden Deaths etc Bill (Now the Inquiries into Fatal Accidents and Sudden Deaths etc Act 2016). See further:

<http://www.parliament.scot/parliamentarybusiness/Bills/87332.aspx>

¹² Petitions PE1501 and PE1567. See further:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/102590.aspx>

¹³ For an exception see Dr Stuart MacLennan, written submission

¹⁴ Scotland Act 1998, section 48(5)

¹⁵ Official Report 20 December 2016 cols 3-4; 17 January, cols 2-3 and 49-50

¹⁶ Official Report, 10 January 2017 col 27 and col 37

¹⁷ Faculty of Advocates, written submission; Scottish Criminal Bar Association, written submission, making reference to an “open letter” from the Dean of Faculty to the Lord Advocate, available at: <http://www.scotsman.com/news/opinion/an-open-letter-to-the-lord-advocate-james-wolffe-qc-1-4227461>; Liam McAllister, Aberdeen Bar Association, Official Report, 25 October 2016, col 27, Derek Ogg QC, Faculty of Advocates, Official Report, 15 November 2016 col 50

¹⁸ Official Report, 17 January 2017, col 40

¹⁹ Sheriffs Association, written submission

²⁰ COPFS, written submission

²¹ Eg Calum Steele, Scottish Police Federation, Official Report, 15 November col 29, Sam McEwan JP, Official Report, 22 November, col 31-32

²² Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/100984.aspx>

²³ Available at:

http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/CallForEvidenceCOPFS.pdf

²⁴ Justice Committee, 1st Report, 2017 (Session 5): Scottish Government's Draft Budget 2017-18. available at

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/103257.aspx><http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103269.aspx#anna>

²⁵ Justice 2 Committee, 4th report 2003 (Session 1), *Crown Office and Procurator Fiscal Inquiry*. Available at: <http://archive.scottish.parliament.uk/business/committees/historic/justice1/reports-03/j2r03-04-vol02-01.htm>

²⁶ Paragraphs 23 to 27

²⁷ Justice Committee, 1st Report, 2017 (Session 5): Scottish Government's Draft Budget 2017-18. Available at

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/103257.aspx><http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103269.aspx#anna>

²⁸ Written submission. The FDA used the Bank of England inflation calculator to arrive at that figure, which in turn is based on the Consumer Price Index measure of inflation. It is more common to use an alternative measure; the "GDP deflator", to calibrate real-terms changes in spending on public bodies. (See further the paper from the Scottish Parliament Information Centre available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-27.pdf) By this measure, there has been a real-terms decline since 2008-9 of around 15%.

²⁹ The Scottish Government, *Recorded Crime in Scotland 2015-16*. Available at <http://www.gov.scot/Publications/2016/09/2960/332779>

³⁰ Procurator Fiscal section of the FDA, written submission

³¹ COPFS, written submission. Eric McQueen, SCTS, Official Report, 22 November 2016, col 45, Bernard Higgins, Police Scotland, Official Report, 22 November 2016, col 38, Cabinet Secretary for Justice, Official Report, 10 January 2017 cols 18-20

³² Procurator Fiscals section of FDA, written submission

³³ Official Report, 20 December 2016, cols 30- 31

³⁴ Written submission

³⁵ As set out later in this report, in the section on victims and witnesses

³⁶ The COPFS's supplementary written submission noted that legislative changes had created categories of witnesses deemed to be entitled to special measures when giving evidence in court. However, formal written notice is still required to activate the right to these measures. The submission states "We have asked the Scottish Government for a legislative change to remove the need for a written notice for child or deemed vulnerable witnesses to use standard special measures in court".

³⁷ See further the Scottish Parliament Information Centre paper available at:

<http://www.parliament.scot/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB09-38.pdf>

³⁸ Written submission

³⁹ Stephen Mannifield, Edinburgh Bar Association Official Report, 25 October cols 39-41; Michael Meehan and Derek Ogg QC, Faculty of Advocates Official Report, cols 47-48; Scottish Criminal Bar Association, written submission

⁴⁰ SCTS written submission. Gordon Crossan, Association of Police Superintendents Scotland, Official Report, 15 November col 32. Sam McEwan JP, 22 November 2016, col 34. On the Committee's visit to Edinburgh Sheriff Court in December 2016, Members noted at least one case where the defence required to visit COPFS offices to view digital evidence because there was no other practicable way to access it

⁴¹ SCTS, written submission

⁴² Gordon Crossan, ASPS, Official Report, 15 November col 17 and col 28

⁴³ Bernard Higgins, Police Scotland, Official Report, 22 November 2016, cols 43-44

⁴⁴ Written submission

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- ⁴⁵ Witnesses from the Aberdeen, Edinburgh and Glasgow Bar Associations, Official Report, 25 October 2016 cols 31-32 and 38, Gordon Crossan, Association of Scottish Police Superintendents, Official Report, 15 November 2016, col 17
- ⁴⁶ Criminal Justice Voluntary Sector Forum, written submission, Audrey Howard, Social Work Scotland, Official Report, 1 November 2016, col 44
- ⁴⁷ Edinburgh Bar Association, written submission
- ⁴⁸ Nancy Loucks, Families Outside, Official Report, 1 November col 56
- ⁴⁹ Gordon Crossan, Association of Scottish Police Superintendents, Official Report, 1 November 2016, col 17-18
- ⁵⁰ Representatives of Aberdeen, Edinburgh and Glasgow Bar Associations, Official Report, 25 October 2016, cols 31-32
- ⁵¹ Susan Gallagher Victim Support Scotland, Official Report, 25 October 2016, col 21; Michael Meehan, Faculty of Advocates, Official Report, 15 November, cols 51-52; notes of the three private meetings with victims X, Y and Z
- ⁵² Representatives of Aberdeen, Edinburgh and Glasgow Bar Association, Official Report, 25 October 2016, cols 29, and 31-32; Michael Meehan, Faculty of Advocates, Official Report, 15 November col 53-54
- ⁵³ Aberdeen Bar Association, written submission
- ⁵⁴ Susan Gallagher, Victim Support Scotland, Official Report, 25 October 2016, cols 21-22
- ⁵⁵ See discussion later in this report in the section on centralised policy-making and local autonomy
- ⁵⁶ Michael Meehan, Faculty of Advocates, Official Report, 15 November 2016, col 44; Sam McEwan JP, Official Report, 22 November 2016 col 31-32
- ⁵⁷ Written submission
- ⁵⁸ Derek Ogg, Faculty of Advocates, Official Report, 15 November 2016, col 48
- ⁵⁹ Written submission
- ⁶⁰ David Harvie, COPFS, Official Report 20 December 2016, col 9. The written submission of the Procurator Fiscals branch of the FDA, submitted in October 2016, indicated that there were then 515 full-time equivalent prosecutors
- ⁶¹ See further the Lord Advocate's evidence discussed in paragraph 102
- ⁶² See also the note of the Committee's private meeting with two former COPFS employees
- ⁶³ Official Report, 15 November 2016, col 23
- ⁶⁴ Official Report, 15 November 2016, col 24
- ⁶⁵ PCS written submission
- ⁶⁶ Official Report, 15 November 2016, col 26
- ⁶⁷ Official Report, 17 January 2017, col 17
- ⁶⁸ Stephen Murray, PCS, Official Report, 15 November 2016, col 20; see also the note of meeting with two former COPFS employees
- ⁶⁹ Note of meeting with two former COPFS employees.
- ⁷⁰ Liam McAllister, Aberdeen Bar Association, Official Report, 25 October 2016, col 2; Edinburgh Bar Association, written submission
- ⁷¹ Official Report, 15 November 2016 cols 34 and 42
- ⁷² Official Report, 15 November 2016 cols 19-20
- ⁷³ Note of meeting with two former COPFS employees
- ⁷⁴ Official Report, 15 November 2016, Col 19
- ⁷⁵ Official Report 17 January 2017, cols 3, 10 and 15
- ⁷⁶ Official Report, 17 January 2017 col 28
- ⁷⁷ Official Report, 17 January 2017, col 32; COPFS second supplementary evidence
- ⁷⁸ Official Report, 17 January 2017, col 8
- ⁷⁹ COPFS, supplementary written evidence; Official Report, 17 January 2017, cols 56-57
- ⁸⁰ Official Report, 17 January 2017, col 17
- ⁸¹ Official Report, 17 January 2017, col 17
- ⁸² Official Report, 17 January 2017, col 34
- ⁸³ Official Report, 17 January 2017, col 34
- ⁸⁴ Official Report, 20 December 2016, Col. 6
- ⁸⁵ Official Report, 17 January 2017, cols 5-6
- ⁸⁶ Official Report, col 41
- ⁸⁷ Available at: <http://www.parliament.scot/Inquiries/COPFS-DB.pdf>
- ⁸⁸ Official Report, 17 January 2017, cols 5-6
- ⁸⁹ Official Report, 20 December 2016, col 5

⁹⁰ Letter available at:

http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/20170208COPFStoMMCorpStrats.pdf.

Strategies available at: <http://www.copfs.gov.uk/publications/business-and-strategy-plans>

⁹¹ Official Report, 13 December 2016, cols 1-13

⁹² Official Report, 17 January 2017, col 37

⁹³ Official Report, 20 December 2016 col 27

⁹⁴ Official Report, 17 January 2017, col 9

⁹⁵ Official Report, 10 January 2017, col 4

⁹⁶ Police Scotland, written submission, COPFS written submission, SCTS written submission; Official Report, 22 November 2016, col 42 (Eric McQueen, SCTS)

⁹⁷ Available at: <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report--publication-version-pdf.pdf?sfvrsn=2>

⁹⁸ Further information available at: <http://www.gov.scot/Topics/Justice/policies/enhancing-efficiency/justice-digital-strategy>

⁹⁹ Supplementary written submission

¹⁰⁰ Supplementary written submission

¹⁰¹ For instance, the Health and Safety Executive or the Scottish Environment Protection Agency.

However, the great majority of reports to the COPFS come from the police

¹⁰² All statistics in this paragraph obtained from COPFS *Statistics on Case Processing*, available at:

<http://www.crownoffice.gov.uk/images/Documents/Statistics/Statistics%20on%20Case%20Processing%20Last%205%20Years%202011-16.pdf>

¹⁰³ The Scottish Government, *Criminal Proceedings in Scotland, 2015-16*. Available at:

<http://www.gov.scot/Publications/2017/01/6376>

¹⁰⁴ Eric McQueen (SCTS), Official Report, 22 November 2016, col 45; Lord Advocate, Official Report, 17 January 2017, cols 13-14

¹⁰⁵ Lindsey McPhie, Glasgow Bar Association, Official Report 25 October 2016, col 35

¹⁰⁶ Audit Scotland, *Efficiency of Prosecuting Cases through the Sheriff Courts*, September 2015.

Available at: http://www.audit-scotland.gov.uk/uploads/docs/report/2015/nr_150924_sheriff_courts.pdf

¹⁰⁷ Official Report, 17 January 2017, col 19

¹⁰⁸ Available at: http://www.audit-scotland.gov.uk/uploads/docs/report/2015/nr_150924_sheriff_courts.pdf

¹⁰⁹ Official Report, 22 November 2016, col 43

¹¹⁰ Official Report, 10 January 2017, cols 28-29

¹¹¹ Gordon Crossan, ASPS, Official Report 15 November 2016, col 32; HMRC written submission

¹¹² Susan Gallagher, Victim Support Scotland, Official Report, 25 October 2016, col 17

¹¹³ Stephen Mannifield, Edinburgh Bar Association, Official Report, 25 October 2016, col 29

¹¹⁴ See further: <http://news.gov.scot/news/independent-review-of-legal-aid>

¹¹⁵ Stephen Mannifield, Edinburgh Bar Association and Lindsey McPhie, Glasgow Bar Association, Official Report 25 October 2016, cols 36-37

¹¹⁶ Lynn Harrison, written submission. Lack of court time, which might include the non-availability of judges, was a reason for 5.6% of adjournments in sheriff summary proceedings in 2015-16 (Scottish Government, written submission)

¹¹⁷ Lindsey McPhie, Glasgow Bar Association, Official Report, 25 October 2016, col 35; SCTS written submission

¹¹⁸ Official Report, 25 October 2016, cols 33-34

¹¹⁹ Official Report 22 November 2016 col 48 (SCTS), Official Report, 10 January 2017, cols 13-14 (Cabinet Secretary)

¹²⁰ Evidence from witnesses representing Rape Crisis Scotland, Victim Support Scotland and Scottish Women's Aid, Official Report, 25 October 2016, cols 18-20

¹²¹ Official Report 10 January cols 14-16 (Cabinet Secretary for Justice); Office Report, 17 January 2017, col 4 (Lord Advocate) and col 10 (Crown Agent)

¹²² Scottish Government, *Criminal Proceedings in Scotland 2015-16*. Available at:

<http://www.gov.scot/Publications/2017/01/6376>

¹²³ Rape Crisis Scotland, written submission. Scottish Women's Aid, written submission

¹²⁴ Official Report 17 January 2017, col 17

¹²⁵ Official Report 13 December 2016, cols 7-8 (Mark Roberts, Audit Scotland)

¹²⁶ Scottish Women's Aid, written submission; Ross-shire Women's Aid, written submission; note of teleconference with Victim Y,

- ¹²⁷ Calum Steele (Scottish Police Federation), Official Report, 15 November 2016, col 22; Steve Farrell, (Community) Official Report 1 November 2016, cols 41-42
- ¹²⁸ Eric McQueen (SCTS), Official Report 22 November 2016, col 45
- ¹²⁹ SCTS written submission. See also Audit Scotland, *Efficiency of Prosecuting Cases through the Sheriff Courts*, September 2015. Available at: http://www.audit-scotland.gov.uk/uploads/docs/report/2015/nr_150924_sheriff_courts.pdf
- ¹³⁰ David Hingston, written submission
- ¹³¹ Supplementary written submission
- ¹³² Official Report 25 October cols 33-34
- ¹³³ Stephen Mannifield, 25 October col 28-29. See also Stephen Murray (PCS), 15 November 2016, col 22.
- ¹³⁴ Scottish Criminal Bar Association, written submission
- ¹³⁵ Sam McEwan JP and John Little JP, Official Report 22 November 2016, cols 33-34. See also Scottish Justices' Association, written submission; Anonymous (2), written submission
- ¹³⁶ Official Report 22 November 2016, cols 46-48
- ¹³⁷ SCTS, supplementary written submission
- ¹³⁸ See discussion in paragraph 26
- ¹³⁹ Scottish Government, written submission. Official Report 10 January 2017, cols 12-14 (Cabinet Secretary for Justice)
- ¹⁴⁰ Liz Dahl, Circle, Official Report, 1 November 2016, col 45. Victim Support Scotland, written submission and supplementary written submission, notes of private meetings with Victims X, Y and Z
- ¹⁴¹ Tom Halpin (SACRO) Official Report, 25 October 2016 col 18, Susan Gallagher (Victim Support Scotland), Official Report 25 October 2016, col 21
- ¹⁴² Dr Bruce Henderson, Dr Gary Cooney, Dr Robbie Cumming, Dr Robin Jamieson
- ¹⁴³ Dr Bruce Henderson, written submission
- ¹⁴⁴ Dr Gary Cooney, written submission
- ¹⁴⁵ Written submission
- ¹⁴⁶ As discussed in paragraph 30 above
- ¹⁴⁷ Official Report 15 November 2016, col 31
- ¹⁴⁸ Written submission
- ¹⁴⁹ Official Report 20 December 2016, col 23
- ¹⁵⁰ Official Report 17 January 2017, col 9
- ¹⁵¹ Official Report 17 January 2017, col 36
- ¹⁵² Official Report 17 January 2017, cols 13-14
- ¹⁵³ Letter to the Convener from the Crown Agent, 23 December 2016. Available at: http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/20161223COPFStoMM.pdf
- ¹⁵⁴ Official Report 22 November 2016, col 45
- ¹⁵⁵ Official Report 22 November 2016, col 46
- ¹⁵⁶ Available at: <http://www.gov.scot/Publications/2014/08/5429/4>
- ¹⁵⁷ Available at: <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2015/03/13/evidence-and-procedure-review-report>
- ¹⁵⁸ Available at: <http://www.scotcourts.gov.uk/docs/default-source/SCS-Communications/evidence-and-procedure-report---next-steps---february-2016.pdf?sfvrsn=2>
- ¹⁵⁹ Official Report 17 January, col 5
- ¹⁶⁰ COPFS, supplementary written submission
- ¹⁶¹ Official Report 10 January 2017, col 6-7
- ¹⁶² Official Report 25 October 2016, col 38
- ¹⁶³ Official Report 10 January 2016, cols 33-34
- ¹⁶⁴ Official Report 1 November 2016, col 41
- ¹⁶⁵ Liam McAllister (Aberdeen Bar Association), Official Report, 25 October 2016, cols 32-33; Michael Meehan (Faculty of Advocates), Official Report, col 53
- ¹⁶⁶ Gordon Crossan (ASPS) Official Report 15 November col 30
- ¹⁶⁷ Official Report 25 October 2016, col 36
- ¹⁶⁸ Official Report 22 November 2016, cols 53-54
- ¹⁶⁹ Official Report, 15 November, col 56
- ¹⁷⁰ Calum Steele (SPF), Official Report 15 November 2016, col 31
- ¹⁷¹ Dr Bruce Henderson, written submission
- ¹⁷² Eric McQueen, Official Report 22 November, col 55

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- ¹⁷³ Lindsey McPhie (Glasgow Bar Association), Official Report 25 October 2016, col 36
- ¹⁷⁴ Stephen Mannifield (Edinburgh Bar Association) Official Report 25 October 2016 col 26
- ¹⁷⁵ Official Report 10 2016, January col 6
- ¹⁷⁶ Official Report 17 January 2016, col 37
- ¹⁷⁷ Official Report 22 November 2016, cols 55-56
- ¹⁷⁸ Marsha Scott (Scottish Women's Aid), Official Report 25 October 2016, col 13; Criminal Justice Voluntary Sector Forum, written submission
- ¹⁷⁹ Official Report, 17 January 2017 cols 48-49
- ¹⁸⁰ Official Report, 22 November 2016, cols 49-50
- ¹⁸¹ Official Report 10 January 2017, col 8
- ¹⁸² Available at: <https://www.scotcourts.gov.uk/docs/default-source/SCS-Communications/epr---a-new-model-for-summary-criminal-court-procedure.pdf?sfvrsn=7>
- ¹⁸³ Official Report 10 January 2017, col 21
- ¹⁸⁴ Official Report 17 January 2017, col 18
- ¹⁸⁵ Official Report 17 January 2017, col 18
- ¹⁸⁶ Official Report, 25 October 2017, col 24
- ¹⁸⁷ Official Report, 15 November 2016, col 57
- ¹⁸⁸ ie crimes with a racial, homophobic or religious hatred element: Stephen Mannifield, Edinburgh Bar Association, Official Report, 25 October 2016, col 42
- ¹⁸⁹ Available at: http://www.scotland.police.uk/assets/pdf/keep_safe/175573?view=Standard
- ¹⁹⁰ Official Report 20 December 2016, col 20
- ¹⁹¹ Stephen Mannifield (Edinburgh Bar Association), Official Report, 25 October 2016, col 30
- ¹⁹² Official Report, 15 November 2016, cols 45-46
- ¹⁹³ Official Report 1 November 2016, cols 49-50
- ¹⁹⁴ Official Report 25 October 2016, col 9
- ¹⁹⁵ Dr Bruce Henderson, written submission
- ¹⁹⁶ Official Report, 15 November 2016 col 36
- ¹⁹⁷ Official Report 22 November 2016, col 36 and 40
- ¹⁹⁸ Official Report 25 October 2016, col 4
- ¹⁹⁹ Official Report, 15 November 2016 col 36
- ²⁰⁰ The individual's identity as a serving fiscal has been verified by Committee staff
- ²⁰¹ Anonymous (2), written submission
- ²⁰² Written note of meeting
- ²⁰³ Official Report, 17 January 2017, col 40
- ²⁰⁴ Official Report, 17 January 2017 col 42
- ²⁰⁵ Official Report, 17 January 2017 col 42
- ²⁰⁶ Supplementary written submission
- ²⁰⁷ Second supplementary submission
- ²⁰⁸ written evidence
- ²⁰⁹ Written submission
- ²¹⁰ Official Report, 25 October 2016, col 23
- ²¹¹ Official Report, 25 October 2016, cols 23-24
- ²¹² Note of meeting with former COPFS employees
- ²¹³ Official Report, 15 November 2016, col 23
- ²¹⁴ Official Report 15 November 2016, col 58
- ²¹⁵ David Grier, written submission
- ²¹⁶ Written submission
- ²¹⁷ SE Link and RSPB written submissions
- ²¹⁸ Official Report, 29 November 2016, cols 6-7
- ²¹⁹ Available at: <http://www.gov.scot/Publications/2008/04/03143616/0>. The report, published under the auspices of the Scottish Government, followed a joint inspection by HM Inspector of Constabulary and the Inspectorate of Prosecutions in Scotland
- ²²⁰ Official Report, 29 November 2016, cols 10-12
- ²²¹ COPFS, supplementary written submission
- ²²² ASAP NHS written submission, Association of Personal Injury Lawyers written submission
- ²²³ Office of Road and Rail, written submission
- ²²⁴ Official Report, 13 December 2016, cols 23-25
- ²²⁵ Written submission

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- 226 Official Report, 13 December 2016, cols 25-28
 227 Supplementary written submission
 228 Supplementary written submission
 229 Criminal Procedure (Scotland) Act 1995, section 23B
 230 Official Report, 1 November 2016, col 44
 231 Written submission
 232 Official Report, 1 November 2016, col 53
 233 Official Report, 1 November 2016, col 47
 234 Note of private meeting with two former COPFS employees
 235 Sandy Brindley (Rape Crisis Scotland), Official Report 25 October 2016, col 2; Marshall Scott (Scottish Women's Aid), Official Report, 25 October 2016, col 3
 236 Official Report, 25 October 2016, col 4
 237 Official Report, 15 November 2016, col 56
 238 Official Report, 25 October 2016, col 29
 239 Note of private meeting with two former COPFS employees
 240 Aberdeen Bar Association, written submission
 241 Aberdeen Bar Association, written submission
 242 Criminal Justice Voluntary Sector Forum, written submission; Scottish Criminal Bar Association, written submission
 243 Michael Clancy (Law Society of Scotland), Official Report, 25 October 2016, col 30
 244 David Hingston, written submission
 245 Audrey Howard, Social Work Scotland, Official Report, 1 November 2016, cols 43 and 49
 246 SACRO written submission
 247 Official Report 25 October 2016, cols 2-3
 248 Official Report 1 November 2016, col 43
 249 Official Report, 1 November 2016, col 50-51
 250 Official Report, 22 November 2016, cols 23-26 and 28-31
 251 Assistant Chief Constable Bernard Higgins, Official Report 22 November 2016, col 54
 252 Sam McEwan JP, supplementary written submission
 253 Official Report 15 November 2016, cols 16 and 38
 254 Official Report 15 November 2016, col 16
 255 COPFS, supplementary written submission
 256 Official Report, 17 January 2017, cols 27-28
 257 Official Report, 17 January 2017, col 25
 258 Official Report, 17 January 2017, col 27
 259 Official Report, 17 January 2017, col 29
 260 Official Report, 17 January 2017, col 25
 261 Official Report, 17 January 2017, col 25
 262 Supplementary written submission
 263 Supplementary written submission
 264 Official Report 15 November 2016, col 51; Official Report, 17 January 2017, col 56; COPFS supplementary written submission
 265 Lynn Harrison, written submission; Anonymous (1), written submission
 266 Official Report, col 15 November 2016, col 45
 267 Written submission, quoting public comments of the Dean of the Faculty, Gordon Jackson QC
 268 Written submission
 269 Official Report 20 December 2016, col 23
 270 Anonymous (1), written submission
 271 Note of informal meeting with victims X and Z
 272 Note of informal meeting with victim Z
 273 Domestic Abuse (Scotland) Bill, schedule, paragraph 8
 274 Official Report, 15 November 2016, col 50-51; Faculty of Advocates, written submission; Scottish Criminal Bar Association (representing criminal defence advocates), written submission
 275 Scottish Women's Aid, written submission
 276 *Review of Victim Care*, January 2016 (the "Thomson Review"), paragraph 6.2. Available at: http://www.copfs.gov.uk/images/Documents/Victims_and_Witnesses/Review%20of%20Victim%20Care%20in%20the%20Justice%20Sector%20in%20Scotland.pdf
 277 James Boyle, written submission; Sharon Mercado, written submission

- ²⁷⁸ Tom Halpin (SACRO) Official Report, 25 October 2016 col 9, Nancy Loucks (Families Outside), Official Report 1 November 2016 col 46-48; Criminal Justice Voluntary Sector Forum written submission; Sharon Mercado, written submission; Families Outside, written submission; Church of Scotland, written submission
- ²⁷⁹ Edinburgh Bar Association, written submission
- ²⁸⁰ Criminal Procedure (Scotland) Act 1995, section 65. If the trial does not commence within that period, the accused must be liberated on bail
- ²⁸¹ Written submission
- ²⁸² Available at: <http://www.gov.scot/Publications/2015/02/1907/2>
- ²⁸³ Criminal Justice Voluntary Sector Forum, written submission; Families Outside, written submission
- ²⁸⁴ Official Report, 1 November 2016, col 54
- ²⁸⁵ COPFS written submission
- ²⁸⁶ Sexual Offences (Procedure and Evidence) (Scotland) Act 2002
- ²⁸⁷ Vulnerable Witnesses (Scotland) Act 2004
- ²⁸⁸ Provisions on special measures are set out in the Criminal Procedure (Scotland) Act 1995, as amended by the 2014 Act, sections 271 to 271M.
- ²⁸⁹ Note of videoconference with victim Y; Ross-shire Women's Aid written submission
- ²⁹⁰ Rape Crisis Scotland, written submission
- ²⁹¹ Available at: <https://www.mygov.scot/victims-code-for-scotland/>
- ²⁹² Scottish Commissioner for Children and Young People, written submission
- ²⁹³ *Evidence and Procedure Review*, March 2015, paragraph 2.110. Available at: <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report---publication-version-pdf.pdf?sfvrsn=2>
- ²⁹⁴ Paragraph 2.3
- ²⁹⁵ Official Report, 10 January 2017, col 4
- ²⁹⁶ Official Report, 17 January 2017, col 14
- ²⁹⁷ Anonymous (1), written submission
- ²⁹⁸ As discussed in the Thomson Review, paragraphs 2.3-2.8. Available at: http://www.copfs.gov.uk/images/Documents/Victims_and_Witnesses/Review%20of%20Victim%20Care%20in%20the%20Justice%20Sector%20in%20Scotland.pdf
- ²⁹⁹ COPFS written submission
- ³⁰⁰ COPFS written submission; Official Report 17 January 2017, col 22 (Lord Advocate)
- ³⁰¹ Victims X, Y and Z; Anonymous (1), written submission
- ³⁰² COPFS written submission
- ³⁰³ Official Report 10 January 2017, col 5 (Cabinet Secretary for Justice)
- ³⁰⁴ Official Report 10 January col 21-22 (Cabinet Secretary for Justice); Scottish Government letter to convener, 23 February 2017; available at: http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/20170223SGtoMM.pdf
- ³⁰⁵ Letter of 6 January to Convener from Mrs Beatrice Jones, available at: http://www.scottish.parliament.uk/S5_JusticeCommittee/General%20Documents/20170106MoiraFundtoMM.pdf
- ³⁰⁶ Letter to Convener 26 January 2017, available at: http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/20170126CSfJtoMM.pdf
- ³⁰⁷ British Transport Police written submission, Glasgow Bar Association written submission; SACRO written submission
- ³⁰⁸ Written submission
- ³⁰⁹ Written submissions
- ³¹⁰ Written submission
- ³¹¹ Ross-shire Women's Aid, written submission
- ³¹² Note of informal meeting with victim Z
- ³¹³ Lynn Harrison written submission; Circle, written submission; Rape Crisis Scotland, written submission
- ³¹⁴ Written submission
- ³¹⁵ Scottish Police Federation, written submission. See also Scottish Borders Rape Crisis, written submission; Lynn Harrison, written submission; Ross-shire Women's Aid written submission
- ³¹⁶ Circle, written submission
- ³¹⁷ Scottish Women's Aid, written submission; Ross-shire Women's Aid, written submission; note of teleconference with Victim Y

³¹⁸ Supplementary written submission
³¹⁹ Official Report 10 January 2017, cols 23-24
³²⁰ COPFS, supplementary written submission
³²¹ This is on the basis that there were around three times the number of trials in that year as there were victims assisted by VIA. A reported crime may have several victims. Additionally, there can also be victims in cases that do not go to trial.
³²² Written submission
³²³ Note of informal meeting with Victim Z. See also Victim Support Scotland, supplementary submission
³²⁴ Note of informal meeting with Victim Y. Note of informal meeting with Victim Z; See also Victim Support Scotland, supplementary submission
³²⁵ Written submission
³²⁶ VSS written submission and supplementary written submission
³²⁷ Note of informal meeting with Victim Z. Anonymous (1), written submission
³²⁸ Official Report 20 December 2016, col 31
³²⁹ written submission
³³⁰ Written submission
³³¹ Written submission
³³² Scottish Council of Jewish Communities, written submission; Sharon Mercado, written submission
³³³ Written submission
³³⁴ Scottish Borders Scottish Rape Crisis, written submission
³³⁵ Victim Support Scotland, supplementary written submission; Note of informal meeting with Victim X; note of informal meeting with victim Z
³³⁶ Note of informal meeting with Victim X; Victim Support Scotland, supplementary submission
³³⁷ Ross-shire Women's Aid, written submission
³³⁸ Note of informal meeting with Victim Z
³³⁹ Victim Support Scotland, written submission and supplementary written submission
³⁴⁰ Ross-shire Women's Aid, written submission
³⁴¹ Official Report 17 January 2016, cols 20-21
³⁴² Official Report 17 January 2017, col 24
³⁴³ Official Report 17 January 2017, cols 22-23
³⁴⁴ Sam McEwan JP, Official Report, 22 November 2016 col 26
³⁴⁵ Ross-shire Women's Aid, written submission; note of informal meeting with Victim Z. Victim Support Scotland, supplementary written submission
³⁴⁶ Official Report, 25 October 2016, col 22
³⁴⁷ Scottish Women's Aid, written submission; note of informal meeting with victim Y; note of informal meeting with victim Z
³⁴⁸ Eric McQueen (SCTS), Official Report, 22 November 2016, col 55
³⁴⁹ Sharon Mercado, written submission
³⁵⁰ Lord Advocate, Official Report, 17 January 2017, col 23; Note of informal meeting with Victim X; Note of informal meeting with Victim Z
³⁵¹ Official Report 17 January 2017, col 23
³⁵² Notes of meetings with victims X, Y and Z
³⁵³ Ross-shire Women's Aid, written evidence; Scottish Borders Rape Crisis
³⁵⁴ Written submission
³⁵⁵ Susan Gallagher, Victim Support Scotland, Official Report 25 October 2016, col 22; Victim Support Scotland, written submission
³⁵⁶ Written submission
³⁵⁷ Official Report, 15 November 2016, cols 48-49
³⁵⁸ Liam McAllister, Aberdeen Bar Association, Official Report, 25 October 2016, col 37
³⁵⁹ Supplementary written submission
³⁶⁰ Supplementary written submission. See also Official Report, 20 December 2016, cols 22-23
³⁶¹ Official Report, 15 November 2016 cols 51-52
³⁶² Official Report, 20 December 2016, col 22
³⁶³ Supplementary written submission
³⁶⁴ Available at:
http://www.copfs.gov.uk/images/Documents/Victims_and_Witnesses/Review%20of%20Victim%20Care%20in%20the%20Justice%20Sector%20in%20Scotland.pdf
³⁶⁵ Paragraph 5.8

³⁶⁶ Paragraph 1.6

³⁶⁷ Official Report 17 January 2017 col 22

³⁶⁸ Official Report, 17 January 2017, col 21

³⁶⁹ Report by Dr Raj Jandoo. Available at:

http://archive.scottish.parliament.uk/business/committees/historic/equal/reports-01/chhokar-vol01-01.htm#P271_36602

³⁷⁰ Paragraph 32.7

³⁷¹ Seven paragraphs were devoted to the relevant provisions in the Stage 1 report of the then Justice 1 Committee: <http://archive.scottish.parliament.uk/business/committees/justice1/reports-06/j1r06-10-vol01-03.htm#3>

³⁷² Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 78 (2)

³⁷³ Official Report, 20 December 2016, col 30

³⁷⁴ Inspectorate of Prosecution, written submission

³⁷⁵ Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 79 (9)

³⁷⁶ Information provided on Inspectorate's webpage: <http://www.gov.scot/about/public-bodies/ipis/about-us>

³⁷⁷ Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 79 (3)

³⁷⁸ Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 79 (6)

³⁷⁹ Quote is from Inspectorate's webpage: <http://www.gov.scot/about/public-bodies/ipis/about-us>

³⁸⁰ Official Report, 20 December 2016, col 30

³⁸¹ Official Report, 20 December 2016, col 44

³⁸² See further: <http://www.gov.scot/about/public-bodies/ipis/reps>

³⁸³ Official Report, 20 December 2016, col 31

³⁸⁴ Submissions indicating no awareness of the Inspectorate included those of Families Outside and the Scottish Police Federation, as well as various submissions from individuals. Sacro, the Sheriffs Association and the Scottish Council of Jewish Communities were amongst those to indicate no experience of or engagement with the Inspectorate. Those indicating that they (or some of their membership) were aware that the Inspectorate existed but that they were not in a position to comment on its work or role included: the Association of Scottish Police Superintendents; the Criminal Justice Voluntary Forum; the Edinburgh and Glasgow Bar Associations; the Faculty of Advocates; and Police Scotland.

³⁸⁵ Written submission

³⁸⁶ Official Report, 10 January 2017, cols 29 and 31

³⁸⁷ Official Report, 20 December col 47

³⁸⁸ M Sheridan, written submission

³⁸⁹ David Hingston, written submission

³⁹⁰ Written submission

³⁹¹ The initials refer to "Her Majesty's Inspectorate of Prosecutions in Scotland". However, unlike, for instance, HM Inspector of Prisons in Scotland, the Inspector is not appointed under royal warrant.

³⁹² Written submission

³⁹³ Official Report, 10 January 2017, cols 30-31

³⁹⁴ Official Report, 20 December 2016, cols 30 and 34

³⁹⁵ Official Report, 20 December 2016, cols 41-42

³⁹⁶ Official Report, 20 December 2016, col 35

³⁹⁷ Official Report, 20 December 2016, col 35

³⁹⁸ Official Report, 20 December 2016, col 37

³⁹⁹ Official Report, 20 December 2016, col 31-32

⁴⁰⁰ Official Report, 20 December 2016, col 37

⁴⁰¹ Official Report, 20 December 2016, col 38

⁴⁰² Official Report, 20 December 2016, col 41

