



CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Crown Agent's Office  
Crown Office  
25 Chambers Street  
Edinburgh  
EH1 1LA

Audrey Nicoll MSP  
Convenor  
c/o Justice Committee Clerks  
Criminal Justice Committee

Tel: 0300 020 3000  
Text Relay prefix: 18001

By email: [justicecommittee@parliament.scot](mailto:justicecommittee@parliament.scot)

Date: 7 March 2024

Dear Audrey

### **Forensic Pathology Services**

Thank you for your letter dated 26 October 2023 seeking my views on what can be done to reform the current pathology services operating model. I am very sorry it has taken so long to reply but I wanted to review a number of matters and provide you with the most comprehensive response.

As you know, the Lord Advocate is head of the systems of prosecution of crime (which includes homicides and suspicious deaths) and the investigation of sudden and unexpected deaths where further investigation is required.

Access to, and availability of, pathology services has been a source of significant concern to COPFS for some time. Pathology services are central to the investigation of most deaths. The Lord Advocate has no power under the common law nor statute to direct or instruct a pathology provider to carry out a post-mortem in any specific case. Pathology services, however, are provided to procurators fiscal by a range of different organisations under the terms of distinct commercial agreements and contracts, reflecting the historical position that local procurators fiscal would make suitable arrangements for pathology service with local providers.

Looked at from a modern perspective in which COPFS provides a national service for death investigations, multiple contracts with different providers do not support a consistent service across Scotland. They are by their very nature rather inflexible and involve separate contract negotiations for separate services. An inefficient and ineffective delivery structure therefore exists, and COPFS as the recipient of the service finds itself bearing the majority of the service delivery risk.

COPFS has worked for a number of years to find a more effective model of service delivery. Our only option is to use the system of contract negotiation with existing suppliers. We have had very limited success in developing a consistent national

service. We continue to discuss with current pathology providers the future of service delivery (including toxicology and mortuary services) and the need to develop a national service delivery framework.

## **Background**

It may be of assistance if I set out some of the background to the review of pathology provision in Scotland, which may assist in providing further context to the comments by His Majesty's Inspector of Prosecution in her last annual report.

At the outset, I should stress that the justice system is well served by skilled and dedicated pathologists in Scotland who will often go to great lengths on an individual basis to ensure that an appropriate service is provided. But they work within a model which is out of date and does not guarantee the future of a pathology service, in particular forensic pathology.

In 2017 COPFS carried out an audit of all the pathology contracts in advance of the next round of contract renewals. The purpose of the audit was to ensure future pathology contracts delivered both value for money and good governance. The review covered the four largest providers: Aberdeen University, Dundee University, Glasgow University and NHS Lothian. The audit concluded that the standard and level of pathology services were inconsistent and subject to substantial geographical variation; additionally, there was, and remains a significant disparity of pathologists' workload across Scotland, leading to associated concerns about pathologists' welfare and resilience, both at a personal and a service level. This has a knock-on effect on the ability to recruit and retain skilled practitioners.

In late 2017 notice was given to the various service providers that existing contracts would be terminated in March 2018, with the intention of agreeing new contracts in due course to try and address some of the inconsistent arrangements.

COPFS created a Pathology Programme Board to oversee this process. The board is chaired by the Deputy Crown Agent Operational Support who is supported by a Programme Director and other senior COPFS officials. Other members of the Board included Scottish Government drugs policy officials for particular meetings and discussions, and an independent expert pathologist with extensive experience in Scotland but who now practises predominantly elsewhere in the UK.

After a period of negotiation failed to result in new contracts being agreed, a formal procurement exercise was carried out by COPFS for pathology, toxicology and mortuary services. The procurement exercise was split into three constituent parts based on geographical and/or health board areas: North (Aberdeen, Grampian, Highlands and Islands), West (Greater Glasgow and Clyde, Ayrshire and Arran, Dumfries and Galloway) and East (Lothians and Borders, Tayside Central and Fife). The procurement process yielded no acceptable and/or compliant bids. The current position therefore is that the pathology contracts should be updated as far as the legal and procurement position allows.

## Caseloads across Scotland

The table below shows reported deaths and post-mortems for the previous five financial years.

Reporting Year	Deaths Reported	Total number of Post Mortems Instructed
2018-19	10,367	5,969
2019-20	10,880	5,644
2020-21	15,702	6,744
2021-22	15,285	7,095
2022-23	14,140	7,039
April 23 – October 23	6,100	3,196

## Staffing

The number of pathologists who undertake work for COPFS has a direct bearing on service provision. The service is delivered to COPFS as set out below.

In the North area, two pathologists employed by NHS Highland carry out post-mortems in non-suspicious cases; one of the two pathologists will retire in 2024 and the remaining pathologist has indicated a desire to reduce their own workload. No replacement pathologist has been identified.

In Aberdeen during the financial year 2022–23 both consultant forensic pathologists took up other posts (within Scotland) and COPFS was required to implement emergency measures to maintain service levels locally. COPFS was effectively managing a pathology service, as opposed to simply being the recipient or client of the service.

Suspicious cases from the north are currently transferred to Edinburgh and covered by NHS Lothian except for some training cases that are being covered in Aberdeen by a very experienced locum forensic pathologist and newly qualified forensic pathologist, to build the new pathologist's experience. Due to continuing staffing issues it is expected service provision pressures will remain in the Aberdeen and Grampian area and the transport of the deceased in suspicious cases will continue for the foreseeable future.

It is hoped in the future there will be capacity for all suspicious post-mortems to be performed in Aberdeen by pathologists employed by NHS Grampian.

Dundee, Tayside and Perth non-suspicious and suspicious post-mortems are carried out by Dundee University.

NHS Lothian carry out suspicious and non-suspicious post-mortems across Edinburgh, Lothian and Borders. At present, NHS Lothian also cover suspicious cases from Grampian and the Highlands, Fife, and Forth Valley.

In Fife there were two NHS Pathologists carrying out COPFS post-mortems in 2018; both pathologists have now retired and at present a locum pathologist employed by COPFS via a private contractor undertakes non-suspicious cases. No NHS employed pathologist from the Fife area has indicated a willingness to undertake COPFS work.

In Stirling and Falkirk cases an NHS Forth Valley Consultant Pathologist undertakes non-suspicious post-mortems, and suspicious cases are transferred to NHS Lothian. In Greater Glasgow and Clyde, forensic pathologists employed by Glasgow University carry out suspicious and non-suspicious post-mortems. In NHS Ayrshire and Arran there were three NHS pathologists undertaking COPFS post-mortems in 2018. Currently there is only one locum pathologist carrying out non-suspicious post-mortems, employed by the NHS via a private contractor, and suspicious cases are dealt with by Glasgow University pathologists.

Dumfries and Galloway non-suspicious post-mortems are carried out by pathologists employed by Dumfries and Galloway Health board and suspicious cases are transferred to be dealt with by Glasgow University pathologists.

In some cases COPFS has had to arrange for the deceased to be transported to another part of Scotland for a post-mortem examination. This can be distressing for bereaved relatives and is inefficient and costly.

## Costs

In relation to fees paid for pathology and related services the table below details figures for the last four full financial years. The budget for the financial year ending in 2024 is projected to result in an overspend due to increasing costs to deliver this service which are passed on, in year, to COPFS. Money from elsewhere within COPFS has been allocated to cover some of this shortfall, reducing capacity and resilience elsewhere across the Service.

<b>Financial Year</b>	<b>COPFS Budget</b>	<b>Actual Cost</b>
April 2018 – March 2019	£7.95m	£8.72m
April 2019 – March 2020	£7.78m	£7.43m
April 2020 – March 2021	£8.85m	£9.30m
April 2021 – March 2022	£9.37m	£9.73m
April 2022 – March 2023	£9.26m	£9.47m

## Paediatric Pathology

Paediatric pathology is a specialist area with the expert field of pathology. Prior to 2018-19 there was at least one paediatric pathologist accepting COPFS work in each geographical area – North (Aberdeen), East (Edinburgh), West (Glasgow) – with three pathologists in the NHS Greater Glasgow and Clyde health board area. Since 2020 the number has reduced to two paediatric pathologists accepting Crown work – one covering the North and one covering the West, East and Dundee areas. This is due to either suitably trained pathologists deciding not to accept COPFS cases or an inability on their part to accept them due to other NHS workload pressures. Positive steps have been taken to formalise the paediatric pathology

services through a service level agreement and COPFS continues to work closely with colleagues to increase capacity in this area as a priority as it is clearly unsustainable.

## **Use of Locums**

Pathology service providers have engaged the services of locum pathologists, as has COPFS directly. The increase in their use has knock on effects on service levels, resilience within the system and also has clear financial implications. At present no pathologists are directly employed by NHS Ayrshire and Arran or NHS Fife.

Service provision in other geographical areas can also be affected by sickness absence and annual leave, causing delays in pathology services, additional distress to nearest relatives and welfare concerns for the pathologists. This is an area where the onus is, of necessity, on COPFS to react to ensure service continuity but is not an acceptable or sustainable long-term position.

## **Gateway Review assurance**

COPFS is not in a position to design and implement unilaterally a national service model to deliver an improved and consistent service across Scotland. In light of the importance of consistent and financially sustainable pathology services to the work of COPFS, external validation of the COPFS pathology programme was sought by means of a Gateway Review from the Portfolio, Programme and Project Assurance function within the Directorate of Internal Audit and Assurance at the Scottish Government.

The initial Gateway Review was carried out in September 2022. Senior officials from COPFS and external stakeholders were interviewed and relevant records were reviewed. The conclusions of the Review were that:

- The current contractual arrangements between COPFS and service providers were not acceptable;
- there was a clear need to move towards a national pathology service;
- that such a move would require political and ministerial support; and
- there was a need for COPFS to work with stakeholders and clinical professionals in relation to recruitment, retention, and training to increase the number of practising forensic pathologists and thereby increase capacity.

The Programme was classified as RED<sup>1</sup> with regards to its ability to achieve its objectives and a key recommendation of the Gateway Review was that COPFS should establish a co-design approach with service providers and key stakeholders in order to help develop national requirements for pathology services. This was seen by COPFS as a more constructive way to approach service delivery than by attempting to revise a series of commercial contracts, and plans were put in place to address the recommendations in the review report.

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<sup>1</sup> RED is defined as “successful delivery of the project appears to be unachievable. There are major issues which, at this stage, do not appear to be manageable or resolvable. The project may need re-base lining and/or overall viability re-assessed.”

A follow up Gateway Review was carried out in the Summer of 2023 and its overview regarding current service provision included the following:

*“As noted in the first Gateway Review conducted during September 2022, COPFS has continually sought to improve the provision of essential Forensic Pathology and Mortuary Service to support requirements throughout Scotland. The current ‘status quo’ is deemed as not acceptable as the services are inconsistent, in many cases, patchy with inequality of provision across Scotland.”*

*“The Review Team acknowledges that it is likely that achieving significant improvements to the quality of the service would require leadership and accountability to reside with the NHS, with the requirements and monitoring of the service being provided by COPFS, in their role as service customer. “A Scottish Government Policy direction could galvanise senior stakeholders to collectively work together to achieve the desired vision. Until this has been achieved, the Review Team’s assessment is that the Vision is unachievable. On this basis, our Delivery Confidence Assessment against achieving the Vision remains RED.”*

*“In the absence of political leadership, COPFS, whilst having responsibilities based in common law to investigate all suspicious or unexplained death, has no powers or controls with health providers or universities to mandate Forensic Pathology and Mortuary Services to an agreed Service Level and can only seek to take forward incremental improvements.”*

*“COPFS has used the first Gateway report to engage positively with stakeholders. There is some recognition that ‘things have to change’ across Scotland and COPFS has shown flexibility and pragmatism in shaping improved service provision where possible. Some progress has been made during the last 9 months.”*

The programme delivery was again assessed as RED and there was a follow up Assurance of Action Plan (AAP) in September 2023. This is the third element of the Gateway Review process, where an independent assessment of actions against Gateway Review report recommendations was undertaken.

This was undertaken on 12 and 13 October 2023 and the key finding was an acknowledgement that progress is being made the Programme should be assessed as Amber/Red<sup>2</sup>, demonstrating that the goals and objectives of the pathology programme are potentially more realistic and realisable.

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<sup>2</sup> Successful delivery of the project is in doubt with major risks or issues apparent in a number of key areas. Urgent action is needed to ensure these are addressed, and establish whether resolution is feasible.

## Stakeholder Engagement Forum

Additional work has been carried out in furtherance of the co-design approach. A Stakeholder Engagement Forum has now been constituted, made up of senior officials and medical staff from service providers, and chaired by the Deputy Crown Agent. The Pathology Programme Director also attends each meeting of the forum. The first meeting took place on 17 October this year. The key aims of the forum are to:

- (1) broaden the range of engagement COPFS has with stakeholders;
- (2) identify and implement incremental service level improvements;
- (3) provide a forum in which to discuss future service design; and
- (4) assess the financing of such reforms to ensure pathology services are fit for purpose.

Smaller sub-groups that cover geographical areas and specialist services will then feed into the Stakeholder Engagement Forum to ensure the full range of Pathology and related services are represented by stakeholders. This move to an extensive framework of stakeholder engagement was recommended in the Gateway Review and follow up review and is acknowledged by COPFS to be a prerequisite of a sound co-design system.

The terms of reference of the Stakeholder Engagement Forum include:

- The structure of the service within all current providers;
- operating methods;
- national contract management;
- recruitment and retention;
- pay scales and gradings;
- caseload management;
- training and development; and
- roles and responsibilities.

The four main providers of pathology services have agreed to take part in the co-design process, those being NHS Lothian, Glasgow University, NHS Grampian and Dundee University. The contract with Aberdeen University ended in June 2023 and the first co-design approach is being developed in the North region between COPFS and NHS Grampian.

A key objective of COPFS is to provide a full business case to the Scottish Government that sets out proposals for the future delivery of forensic and non-forensic pathology services, mortuary services and linked specialist services such as paediatric pathology. A related objective is to agree and recommend in the same business case a funding model for the provision of these services.

There is a clear and pressing need for a coordinated and structured national service. The Gateway Review itself emphasised the point that a move from the current geographical governance and delivery structure will not occur in the short term and that Scottish Government intervention and support is critical to the success of any reforms.

## **Imaging/CT Scanning**

COPFS is aware of CT imaging being used in certain circumstances by pathologists to assist in the diagnosis of cause of death, and this is something that the Public Petitions Committee is also considering. COPFS would support any improvements to the death investigation process that would minimise the distress caused to families without affecting the thoroughness of the investigation, including the confirmation of a cause of death.

Officials from COPFS also regularly meet with the current pathology providers and the potential future use of CT scanners has, from time to time, formed part of those discussions.

Recent discussions with pathology providers have included the benefits and possible difficulties of the suggested use of CT scanners as an alternative to invasive post-mortem examinations and this can be considered as part of the co-design model.

## **The Independent Forensic Mental Health Review – the Barron Review**

I also thought it would be helpful to draw the Committee's attention to an area in which similar issues have arisen but progress is now being made. The Scottish Government commissioned a review into the provision and governance of forensic mental services in May 2019. In February 2021 the report was published. A key recommendation was that all forensic mental health services should be brought under the management and governance of a new national Forensic Board. The parallels to be drawn between the provision of forensic mental health services and the provision of pathology, mortuary, and toxicology services are clear and, I would suggest, well founded.

## **Conclusions**

COPFS identified concerns regarding contractual arrangements in place for the provision of pathology and related services in 2018. A rigorous procurement exercise embarked upon with the intention of improving service performance and provision failed to result in new service level agreements and contracts being agreed. There are systemic issues relating to staff retention and training, and it is clear that this service relies heavily on the dedication and professionalism of those involved in the work to deliver. A number of critical pathology posts are lying vacant at the moment and COPFS has no ability nor remit to assist in the filling of vacancies left by retiring and resigning pathologists.

The unavoidable conclusion is that there is a clear need for the appointment and establishment of a national Pathology and Mortuary Service, preferably under the appropriate leadership from the NHS.

Such reform requires to be delivered in collaboration with the Scottish Government and NHS Scotland and such collaboration needs to be at a national level. Our aim at COPFS is to work with colleagues to deliver a pathology service for the 21<sup>st</sup> century which supports the investigation of sudden and suspicious deaths, and in which the people of Scotland can have confidence that there is a consistent level of service



across the country. We will continue our efforts to engage with the Scottish Government and the NHS on this important area of work.

I hope that this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Logue', written in a cursive style.

John Logue  
Crown Agent