Justice Committee

Correspondence from Crown Agent & Chief Executive – complaints against the Lord Advocate in role as head of prosecution service

Thank you for your letter of 20 February 2013.

I note that Mr Ross considered that the original response did not sufficiently address the matters which he was enquiring about. I hope the following expansion is helpful.

Where any complaint relates to the work of the Crown Office and Procurator Fiscal Service (COPFS), any person or organisation who is dealt with or is affected by the work of COPFS can make a complaint under our Customer Feedback Policy. Such complaints can include anything which relates to the remit of COPFS as the Public Prosecution Service for Scotland when an individual or organisation is unhappy with the way in which a case, in which they have an interest, has been dealt with. If it is felt that any complaint is not investigated or dealt with properly by COPFS then the person raising the complaint can refer it to the Scottish Public Services Ombudsman.

As was confirmed, the Lord Advocate, like any other Minister, is bound by the Ministerial Code. Paragraph 2.36 of that Code provides that in respect of criminal proceedings the Lord Advocate, and the Solicitor General, act wholly independently of the Government. The fact that the Lord Advocate acts independently of the Government in his role as head of the systems of criminal prosecution and investigation of deaths is also specified in section 48(5) of the Scotland Act 1998.

Section 48 of the Scotland Act also provides that the Lord Advocate can be removed from Office, with the approval of Parliament, by the First Minister [s.48(1)].

Whilst not required to do so, the Lord Advocate will often provide reasons for prosecutorial decisions. The Lord Advocate is entitled to attend and address Parliament and can be required to attend Parliament to explain any perceived failure in the system of prosecution.

The Lord Advocate can be questioned by MSPs about the exercise of his functions although he may not be required to answer questions or produce documents relating to the operation of the system of criminal prosecution in relation to any particular case if he considers that it might prejudice criminal proceedings or may otherwise be contrary to the public interest.

Under the Parliament’s Standing Orders questions about the operation of the systems of criminal prosecution and investigation of deaths are answerable by the Law Officers.

Examples of when a Lord Advocate has addressed Parliament include the address following the acquittal of Angus Sinclair and the address regarding the handling of the Chhokar prosecution.

If any complaint alleged criminality by a current Lord Advocate in the exercise of their role as head of the system of criminal prosecution in Scotland then this would be
investigated by the Police as it would in any ordinary case. It would only be formally reported by the Police to the Crown Agent if it appeared that there was a sufficiency of evidence to allow consideration of criminal proceedings. The Crown Agent would allocate the consideration of such a case to an appropriately independent person.

This is also the process which is followed if any allegation of criminal conduct is received against any Member of the Scottish Parliament.

Where any report was formally received from the Police by the Prosecutor Fiscal regarding a former Law Officer (when it appeared there was a sufficiency of evidence following the carrying out of the normal Police investigation) the current Lord Advocate could, if appropriate, recuse himself or herself of any involvement in consideration of the case and arrangements would be made by the Crown Agent for Independent Counsel to the decision on action.

I hope this is helpful.

Catherine Dyer
Crown Agent & Chief Executive
25 February 2013