Foreword

Scottish Women’s Aid (“SWA”) is the lead organisation in Scotland working towards the prevention of domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to members and non-members. Our members are local Women’s Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people experiencing domestic abuse.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need, and an appropriate response and support from, local Women’s Aid groups, agencies they are likely to contact and from the civil and criminal justice systems.

Budget figures and real term decrease in spending

In relation to their scrutiny of the of the Scottish Government’s Draft Budget 2014-15, the Committee has asked SWA to submit written evidence specifically on the Crown Office and Procurator Fiscal Service (“COPFS”) budget, including its commitment to implement a revised protocol for processing domestic abuse cases. We welcome the opportunity to respond, and our comments and observations are below.

In Chapter 5 of the Equality Statement accompanying the Draft Budget, Table 5.02, the COPFS spend profile, shows an increase in funding from £108.1 million for the 2013-14 Budget, to £108.7 million in the 2014-15 draft Budget, rising to £109.4 million in 2015-2016 Plans.

However, in the Draft Budget, at Chapter 11, which focusses on COPFS, Table 11.02 indicates that the reality of the spending is quite different and that, in real terms, there will be a drop of £1.4 million, from £108.1 to £106.7 in 2014-15, and a further decrease of £1.2 million, down to £105.5 for 2015-16, an overall decrease of £2.6 million.

Given the stated priority of the Scottish Government in the Draft Budget to address violence against women, particularly domestic abuse, this is concerning, particularly given the fact that the workload of the COPFS will likely increase over the next 2 years, for reasons we expand on below.

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COPFS commitment to implement the requirements of the EU Directive establishing minimum standards on the rights, support and protection of victims of crime

The EU Directive establishing minimum standards on the rights, support and protection of victims of crime (“the EU Directive”), came into force on 15th November 2012. The UK as a Member State, and thus, the Scottish Government too, has 3 years to translate the requirements into law/procedure or ensure that existing law and procedure complies. This Directive is intended to ensure that all victims of crime receive appropriate information, support and protection, are able to participate in criminal proceedings, are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner.

Earlier this year, the Scottish Government introduced the Victims and Witnesses (Scotland) Bill, which will soon enter its Stage 2 scrutiny before the Justice Committee, an initiative to both take forward work already in progress in Scotland relating to support for victims and witnesses and also comply with the requirements of the EU Directive. This Bill contains proposals that, if implemented correctly, would greatly improve the experience of women, children and young people experiencing domestic abuse who become involved with the criminal justice system as a result of such abuse. They will, however, generate an increase in the workload of certain criminal justice bodies, in particular COPFS.

Standards of Service

The Bill contains provisions, at section 2, which requires that certain persons, including the Lord Advocate, Chief Constable of the Police Service of Scotland, the Scottish Court Service and the Parole Board for Scotland, must set and publish standards in relation to the services which those bodies provide to victims and witnesses, and also set out their complaints procedure.

These standards must be a high threshold of best practice. Therefore, along with the other criminal justice bodies prescribed, COPFS will be required to undertake a not inconsiderable amount of work to ensure that the standards are drafted effectively, which will include consultation with the victims of crime and the organisations supporting them during the formulation of these standards. To ensure consistency of approach and compliance, the standards will have to be reviewed, monitored and actually enforced in practice, which will require COPFS to put in place systems for regular monitoring, evaluation and feedback of the experience of victims, witnesses and support organisations.

Disclosure of information about criminal proceedings

Article 6 (Right to receive information about their case) of the EU Directive states, inter alia, “1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the

criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information”, meaning that victims will not be obliged to actively ask for such information themselves, but should be automatically provided with it as a matter of course.

The Bill enacts in section 3 by placing the requisite duty on the Chief Constable, Scottish Court Service and COPFS. It specifies that the information provided will cover decisions not to proceed with, or to end, a criminal investigation, or not to institute criminal proceedings against a person and any reasons for these; information on place, date and time of a trial; the nature of charges libelled, the stage that criminal proceedings have reached, the final disposal in criminal proceedings and any reasons for it. It should be noted, however, that various Articles in the EU Directive, particularly Articles 4 and 11, specify that a greater range of information should be available than that currently prescribed in the Bill.

In order to comply with the requirements of the Bill and the EU Directive, COPFS will have to expand its existing procedures and develop revised internal instruction and public-facing guidance on how it will fulfil its obligations.

Although this duty is incumbent not only upon the COPFS but also the Chief Constable and Scottish Court Service, it will likely impact much more on COPFS, given the dedicated and specialist approach to the investigation and prosecution of domestic abuse, including the protection and support of those experiencing the abuse, and the extent of partnership work being done by COPFS with Women’s Aid groups, ASSIST and Police Scotland.

Protection of vulnerable witnesses

In furtherance of the intention of the EU Directive and the obligations it puts on the Scottish Government in terms of responses to particularly vulnerable categories of victims and witnesses, the Bill extends, firstly, the definition of child to children under 18 and also the automatic right to use standard special measures to victims of sexual assault and rape, stalking, domestic abuse and trafficking.

COPFS, specifically their Victim Information and Advice Service (“VIA”) 4, will have additional work in liaising with Police Scotland to ensure that the appropriate investigations are undertaken to identify vulnerable witnesses who will benefit from these protections, and ensuring that the full range of special measures is proactively explained to women, children and young people. Victims’ awareness of and use of special measures will require to be actively monitored by COPFS and evaluated by the victims and witnesses using them, which will be in line with the standards of service referred to above.

We would comment that being aware they will be able to give evidence without being faced by the abuser may actually be the deciding factor in whether women even report the abuse to the police, which may, in turn, increase reporting to the police and, where appropriate, numbers of cases prosecuted by the COPFS.

4 http://www.crownoffice.gov.uk/involved-in-a-case/victims
Criminal Justice (Scotland) Bill impact on COPFS workload

In their written evidence to the Justice Committee on the Bill, COPFS stated, inter alia, “The Bill will have a significant impact on COPFS and how we deal with the cases reported to us. In particular, the abolition of the requirement for corroboration will result in a revised approach by prosecutors assessing available evidence when considering whether to take action in a case. … COPFS consider that this provision will allow proceedings to be raised in a number of cases where at present the Crown cannot proceed due to a technical lack of corroboration but where otherwise the available evidence is of high quality and supports the victim’s version of events. In particular this provision will allow COPFS to consider cases which arise from areas of law which currently disadvantage certain groups of victims purely due to the nature of the offences committed against them such as domestic abuse or sexual crime … The results of the exercises suggest a 1.5% increase in the number of cases which will be reported to COPFS by the police; a 1% increase in COPFS summary business; and a 6% increase in COPFS solemn business.”

We note it was recently reported in the media that figures provided by the Scottish Government revealed that 26,859 charges were reported with a domestic abuse aggravator in 2011/12 and 2,674 were marked for no action on the grounds of a lack of corroboration and in 2012/13, there were 27,101 charges with 2,803 marked no action.

If the provisions of the Bill are implemented, and COPFS introduces the proposed new “two-stage” prosecutorial test, this will require additional work and resources in re-writing COPFS guidance and procedures, applying the test, implementing the new approach and raising public and professional awareness of how this works in practice.

We would also raise the point that the recent appointment by COPFS of a specialist prosecutor to review domestic abuse prosecution in Scotland, with the remit of reviewing all areas of COPFS work and training in domestic abuse, may result in extra work should this review bring recommendations that changes need to be made to prosecution policy.

Processing domestic abuse cases and impact of delays

In relation to COPFS commitment to implement a revised protocol for processing domestic abuse cases, the revised version of the document “In Partnership Challenging Domestic Abuse” has been produced. This Joint Protocol between COPFS and Police Scotland aims to identify best practice and achieve consistency in approach of the investigation, reporting and prosecution of cases involving domestic abuse.

SWA support the revised Protocol and would note that it has the potential to either decrease or increase the number of cases dealt with by the COPFS. Firstly, it provides clarity on those cases which should be appropriately identified and reported.

http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/CJ46_COPFS.pdf
as domestic abuse by the police; this should concentrate, and better target, the police response toward domestic abuse. The Protocol also adopts a wholly appropriate, more rigorous and robust approach to prosecution of domestic abuse, in particular where threats of violence are involved.

Recent media coverage has highlighted that the increase in prosecutions in the specialist Domestic Abuse court in Glasgow has resulted in a backlog of cases which are taking several months to be heard, as opposed to the target timescale of six weeks. Additionally, the proposed court closure programme, and the concentration of a potentially greater numbers of cases in a fewer number of courts across Scotland, may create similar backlogs and delays.

This is not a new phenomenon. In our written response to the Justice Committee's call for evidence on the Draft Budget 2012-13 and Spending Review 2011, we indicated that women were reporting long waiting times for trial to come to court, and experiencing delays caused by repeated unnecessary adjournments (or “churn”).

The continuing existence of these problems and their potential exacerbation, as we have explained above, is of considerable concern to SWA. Delays in bringing perpetrators of domestic abuse to court have implications for the safety of women, children and young people experiencing such abuse, particularly in terms of bail conditions imposed by the court, which, in turn, may have the effect of deterring women from engaging in the prosecution process and thus increasing the attrition rate.

Addressing this backlog, and taking steps to ensure that it does not build up again, will put pressure on existing COPFS resources and personnel.

Conclusion

- Fulfilling the requirements of the Victims and Witnesses (Scotland) Bill, and compliance with the wider obligations imposed by the EU Directive, will necessitate the COPFS undertaking work far in addition to their current responsibilities in providing information to, and support for, victims and witnesses. Firstly, they will have a mandatory legal duty to provide information, both routinely in each case, and on demand, as and when requested by victims. Also the scope of the information required is wider and more detailed than at present. In addition, the COPFS will have an increased responsibility and wider role in providing improved responses to identifying vulnerable witnesses and facilitating their giving evidence.
- The radical reforms to criminal procedure set out within the Criminal Justice (Scotland) Bill have the potential to make an unprecedented impact on the caseload and procedures of COPFS.
- The backlog of cases in the Glasgow specialist Domestic Abuse Court must be addressed and steps taken to ensure that prosecution of cases involving domestic abuse, both in this court and across Scotland, particularly where a specialist approach has been adopted, are expedited. Again, this will impact on COPFS time and resources.
A reduced COPFS budget will restrict their ability to both respond to the considerable changes ahead and ensure that prosecutions of cases involving domestic abuse proceed without delay. As we have previously stated, women, children and young people experiencing domestic abuse have been assured that responses will improve and that their experience in court will be safer and more supportive. Therefore they have an expectation that it will happen and the issue here is how expectations will be managed and commitments delivered.

Scottish Women’s Aid
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