

JUSTICE COMMITTEE

PRE-BUDGET SCRUTINY OF THE SCOTTISH GOVERNMENT'S DRAFT BUDGET 2021-22

SUBMISSION FROM PROCURATORS FISCAL SECTION OF FDA

The Procurators Fiscal Section of FDA welcomes the opportunity to once again provide evidence to the Justice Committee in respect of its scrutiny of the 2021/22 budget for COPFS.

About us

FDA is the trade union which represents senior managers and professionals in the public sector, particularly within the civil service. We represent the single largest group of lawyers within the Law Societies of Scotland, Northern Ireland and England and Wales. This includes the prosecutors in each of these jurisdictions.

We are affiliated to the TUC and STUC, but are strictly politically neutral and have no formal links with any political party.

The Procurators Fiscal Society is a section of the FDA and represents legal and other professional staff and managers within the Crown Office and Procurator Fiscal Service (COPFS). The vast majority of prosecutors in COPFS are members of FDA.

The Draft Budget for COPFS 2021/22

We have considered the committee's call for evidence and will restrict our submission to those areas where we consider we can properly and most usefully assist the committee.

1. What matters and pressures on spending do you wish to bring to the attention of the Committee?

Some members of committee may recall from the evidence we have submitted in previous years the disparity between the salaries paid to staff in COPFS and those paid to colleagues doing comparative jobs in Scottish Government. The gap is most pronounced in the first level legal grades, but applies throughout COPFS at all grades.

The crucial matter about which the committee will wish to be aware is that the dispute regarding pay in COPFS has reached the point where on 1st December we commenced an indicative ballot of FDA members in support of industrial action.

Our next step is likely therefore to be a full statutory ballot for strike action in the new year.

The pay differential between COPFS and Scottish Government (SG) staff has been a long-standing issue and FDA has campaigned for improved, fair pay over that time.

Responsibility for pay negotiations is delegated to COPFS and we have been in discussion with colleagues within COPFS to explore resolution to our dispute.

Over the course of the last 18 months, we have engaged positively with COPFS colleagues and we contributed to the business case submitted by the Lord Advocate to the Cabinet Secretary for Finance, in which the case was made for the additional necessary funding to address the pay parity issue. Notwithstanding the obvious difficulties that the Covid19 pandemic has presented, we are not aware of any substantive response from the Cabinet Secretary for Finance to the Lord Advocate on this matter.

On 5th November 2020 FDA met with COPFS colleagues who confirmed that pay parity would not be affordable from the existing budget and the *interim* pay award made in May 2020, in line with the public sector pay policy, would in effect be the final pay offer for 2020/21. This was particularly disappointing given that FDA had previously indicated that we would not regard pay for 2020/21 as concluded until the issue of pay parity was resolved. COPFS advised that the necessary budget to provide pay parity has not yet been forthcoming from government.

For the committee's assistance, at Annex 1 we have updated the comparison table previously provided which demonstrates how someone starting their career in COPFS would, over a seven-year period, earn almost **£90,000** less than their comparator in Scottish Government. We have also provided at Annex 2 a table showing the updated pay scales for COPFS and SG and we have highlighted the relevant comparator grades for legal staff.

Having consulted with FDA members in COPFS we know they feel undervalued for the important work that they do; It is complex (often harrowing) work, which involves decision-making that impacts upon the lives, liberty and safety of Scotland's communities. It is a highly pressurised role and rightly attracts a significant degree of public scrutiny. The failure by Scottish Government Ministers to provide sufficient funding, to enable our staff to be paid fairly and on an equal basis to those colleagues in Scottish Government, has led to a perception that the work they do is not truly or properly valued by Ministers.

There is undisputed value in the work undertaken by colleagues across the Scottish Government, but it cannot be right that those who deal with vulnerable witnesses, victims of child sexual abuse and the prosecution in the public interest of some of

the most serious and violent offenders in Scotland are valued and rewarded less than their Scottish Government counterparts.

Our position is a principled one; we are only asking to be paid the same as colleagues doing comparative jobs in Scottish Government and is based on the value of the work that we do. COPFS must be in a position to continue to recruit from the best pool of staff. That requires commensurate salary expectation, particularly in the early years. It is also necessary in order to retain experienced staff.

2. What has been the impact of the current COVID-19 pandemic on the activities of your organisation and its spending requirements?

We would like to take this opportunity to highlight to the committee the pivotal role COPFS staff have played throughout the Covid19 crisis in keeping the justice system running. As keyworkers, our members have continued to attend offices and courts where necessary in order to keep the justice system running throughout this period; The success of the organisation in rising to the challenges of operating throughout Covid19 has been as a direct result of the extraordinary effort, dedication and hard work of COPFS staff. We also know that it will be our members who will be relied upon by victims and witnesses to tackle the backlog of cases in the time ahead.

We have considered the written and oral evidence to committee by the Lord Advocate and the evidence session earlier this year with Mr McQueen, Chief Executive of SCTS. We share the concerns raised in those submissions regarding the impact of Covid19 and the effect it will have on case backlogs over the years ahead. In particular, we would associate ourselves with the comments of the Lord Advocate in which he advised that additional court capacity would be required to reduce the backlog and that COPFS would be unable to support an expanded court system without additional resource.

We know that the committee has been previously made aware that the volume of complex and serious cases has continued to increase, and that trend is likely to continue into 2021 and beyond.

If COPFS is to tackle the above combined challenges and be able to deliver its service in a way that allows us to meet reasonable public expectation, we will require further increased staff resource.

3. How has your organisation adapted to working during the pandemic, what further changes are needed and what changes are you planning to retain after the pandemic has ended?

Following the '*lockdown*' announcement, and as the full scale of the pandemic emerged, COPFS moved rapidly to a position where we were able to deliver our

essential business with the *majority* of staff working from home. Colleagues working within the IT/Digital team within COPFS deserve particular praise for the speed of their response and the level of support provided to staff across the organisation in such difficult circumstances.

It should also be noted that from the outset, there were significant numbers of COPFS staff required to attend our offices and the courts in order to progress urgent and essential court business. That work involved dealing with members of the public or others from the criminal justice sector in circumstances that made physical distancing very difficult. FDA's view is that our members should be recognised as essential key workers in the way that many others have been across the health, retail and public sectors.

In order to adapt and respond to the differing needs and capacity of staff to balance their workloads with other responsibilities (for example, those who were for a number of months also trying to provide childcare or 'home schooling'), the hours during which staff could work were temporarily extended. FDA has consulted with members about their experiences of working from home and the changed working patterns; we have also engaged with colleagues in HR to discuss which changes have had a positive impact in terms of flexibility for staff and how some of these changes might be implemented in the time ahead. We have been assured that any permanent changes will be negotiated with the unions.

A number of criminal court procedure changes were introduced in order to enhance judicial oversight of case management and reduce the numbers of cases requiring to be resolved through a trial; thereby seeking to address the reduced court capacity resulting from physical distancing requirements. In practice however, many of these changes significantly increased the time and work involved in case preparation and added considerably to the workload of our members. Our members are committed and hard-working professionals, but these changes only increased the burden they felt knowing that the case backlog was continuing to grow. Many members have reported to us a detrimental impact on their morale and wellbeing over the last few months.

More recently, there have been further procedural changes through the introduction of the Pre Intermediate Diet Meetings (PIDM), which is essentially early engagement between the prosecution and defence to identify any issues, confirm readiness for trial or agree an acceptable plea. At this stage, it is too early to know how successful the new practice will be; how it will impact on the workload of members and the consequential impact on their wellbeing.

COPFS was resourced for 2020/21 to meet the pre-Covid19 court programme. If the known case backlog is to be successfully addressed in the years ahead, any increase to the court programme will necessitate a commensurate increase in the resource capacity for COPFS.

FDA's position is that whilst we do not consider it appropriate for a trade union to dictate the details of any government's budget, we will always argue that the resources available must match the service provision demanded of that organisation. It follows therefore that either COPFS requires to be adequately resourced or alternatively, political decisions are required of those in government to appropriately review public expectation and make choices about what they want the prosecution service of Scotland to deliver.

The choice for the government is to commit the necessary resources to meet reasonable public expectation, or for those difficult decisions to be made about what aspects of the service and work that we currently undertake will we stop doing.

FDA has requested of COPFS that guidance be provided to staff in relation to what can reasonably be expected of them; and how to deal with the backlog of cases in a way that does not jeopardise their own health and wellbeing. These discussions are ongoing.

Fiona Eadie, Secretary of PFS Section of FDA

Allan Sampson, FDA National Officer for Scotland and Northern Ireland

Annex 1

Pay differential between COPFS and Scottish Government

	COPFS	Scottish GOV	Difference
Trainee Year 1	25,409.00	26,155.00	-746.00
Trainee Year 2	26,572.00	29,163.00	-2,591.00
Newly qualified	33,551.00	48,930.00	-15,379.00
1 Post Qualification Experience (PQE)	37,938.00	52,478.00	-14,540.00
2 PQE	40,974.00	56,122.00	-15,148.00
3 PQE	43,529.00	61,006.00	-17,537.00
4 PQE	46,084.00	61,006.00	-14,922.00
5 PQE	52,487.00	61,006.00	-8,519.00
			-£89,322.00
			(worse off in COPFS)

PAY SCALES FOR COPFS v SCOTTISH GOVERNMENT**Scottish Government pay scales:**

	A3	A4	B1	B2	B3	BF	C1	C2	C3
Max-3			26,155	30,652	38,541	30,400	48,930	64,057	74,038
Max-2	20,064	23,344	27,150	32,138	39,663	33,266	52,478	66,285	74,884
Max-1	21,148	24,107	28,172	33,624	42,194	35,184	56,122	69,163	75,728
Max	22,232	24,909	29,192	35,110	46,599	37,578	61,006	73,935	76,574

Starting salary - legal trainees

Legal trainees aren't subject to the normal Scottish Government pay ranges.

Pay rates for **legal trainees** from 1 April 2020 are:

1. **Point 1 - £26,155**
2. **Point 2 - £29,163**

COPFS pay scales:

	B	C	D	E	PFD [C1]	SPFD [C1]	F	PD [C2]	G [C3]	H [C3]
Ma x -3		25,40 9	30,50 0	38,60 9	40,97 4	51,53 9	51,15 6	57,44 1	62,81 6	71,88 4
Ma x -2	20,76 3	26,57 2	31,71 7	40,59 6	43,52 9	53,69 6	53,55 5	60,55 7	65,11 3	72,94 0
Ma x -1	21,49 0	27,79 4	32,93 3	42,58 3	46,08 4	55,85 4	55,95 3	63,67 3	68,29 4	73,99 6
Ma x	22,21 7	29,03 9	34,15 0	45,69 3	52,48 7	59,47 6	59,82 4	68,47 4	73,28 0	76,94 4

Depute Accreditation

Depute Accreditation Year 1 [C1]	33,551
Depute Accreditation Year 2 [C1]	37,938

Legal Trainees

Trainee Year 1	25,409
Trainee Year 2	26,572