Thank you for inviting the Procurators Fiscal Section of FDA to submit evidence in respect of the Justice Committee’s pre-budget scrutiny of the Scottish Government’s draft budget for 2019/20. We will restrict our response to item two on the call for evidence, namely:

“What is your view, in particular, on the Scottish Government’s proposals for spending on the Crown Office and Procurator Fiscal Service? This includes recent announcement of an additional in-year budget of £3.6million to fund the recruitment up to 140 permanent staff.”

About us

FDA is the trade union which represents senior managers and professionals in the public sector, in particular the civil service. We represent the biggest 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 or affiliation to any political party.

The Procurators Fiscal Society is a section of the FDA and represents mainly legal staff, including the most senior lawyers, within the Crown Office and Procurator Fiscal Service (COPFS). The majority of prosecutors in COPFS are members of FDA.

The Draft Budget for COPFS 2019/20

FDA welcomes the in-year increase to the COPFS budget of £3.6m to fund the planned recruitment of up to 140 permanent new staff. It is important however to note the context of that increase follows several years of cumulative real terms cuts in our budget. Even by combining last year’s budget (for 2018/19) of £108.4m resources and a capital budget of £3.6m (£112m total) with this additional in-year increase, that takes us to an annual equivalent of £115.6m. By way of contrast, in 2009-2010 the COPFS budget was £118.3m. If our budget had kept pace with inflation, by 2017 this would have amounted to £150.8m – a difference of £35.2m and therefore a real terms cut of 23.3% in the COPFS budget.

The Committee will recall that in evidence provided last year, we welcomed the recruitment that was taking place at that time and the move away from temporary, fixed term appointments, to permanently filling entry level and promoted vacancies. It has been indicated that this additional money will fund up to 60 new permanent prosecutors. That recruitment is welcome and much needed, but we hope to demonstrate in this submission that that process may not be as straightforward or quick to deliver as might be expected.

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1 Bank of England inflation calculator
The funding understandably comes with expectations of higher quality, timely service provision by COPFS in key areas of its business and the implementation of stretching Key Performance Indicators (KPIs). The concern of FDA relates to the organisation’s capacity to deliver on those expectations in the short term.

Although recruitment has commenced and further drives are ongoing, the stark reality is that recruitment and enhanced vetting of the type properly required by COPFS of its employees before appointment is a time-consuming process. In all likelihood we will be nearing the end of this financial year before many of those recruited under this funding will take up post.

Once recruited, there requires to be time given to invest in training for new staff in order to develop their skill in prosecution practice. A former Solicitor General, Neil Davidson, noted in evidence to previous Justice Committee members in 2001 that “Fiscals do not grow on trees”. He went on to say:²

“One must acquire experience in prosecution, which one can do only by appearing in court. There is no quick way of getting a collection of experienced deputes from anywhere other than from the Procurator Fiscal Service. There is a means of training people at a high level, which is not found in other areas, but it is the development of specialist skills”

He also said “So far, the Procurator Fiscal Service has been able to retain a high proportion of its employees. I know that that is not a complete answer, but ensuring retention is the way forward”

We will make further observations on the point of retention later in this submission.

Bringing in additional prosecutors to COPFS will not solve the problem overnight. This must be part of a sustained and long-term commitment from the Scottish Government to adequately resource COPFS to train and develop our staff to deal with the increasing numbers of serious and complex cases. As stated above, training and developing new staff to the standard required to deliver a professional prosecution service in Scotland takes time.

Unlike other government lawyers, in addition to the two years spent as trainee solicitors, COPFS has a further two year training grade (on a reduced salary scale) for new Deputes to be ‘accredited’. FDA supports an effective training programme for new Deputes, but does not support the accreditation process in its current form and do not accept that pay restraint should be an essential part of that process.

The training grade purports to recognise the anticipated training trajectory for new prosecutors before they become well-rounded prosecutors – and even then only in the most key, central elements of that role (it does not include, for example, experience in the investigation of sudden and/or suspicious deaths or in High Court or serious and organised crime preparation). They require to be coached and supported by experienced prosecutors working alongside them – and those experienced prosecutors require time to invest in that work. It is not unreasonable therefore to expect that it will take some two years or more

² Justice Committees 1 and 2, Joint Meeting, 16th May 2001
before the full benefit of recruitment is felt, yet we see that expectations are high that performance improvements will be delivered well before that.

As indicated above, the issue of retention in COPFS is one that has been considered by previous members of the Justice Committee. At that time, a former President of the Procurators Fiscal Section of FDA, Richard Stott, described that the sort of people who come in to the job do so because they have a commitment to public service. He observed at that time that there were a few who had left COPFS in order to join the Scottish [Government] legal department because of differences in pay. We now know from our members that a significant number of them have left in recent months in order to move to the Scottish Government, essentially on level transfer, but many of whom will be earning at least £10,000 more than they did as Procurators Fiscal.

We would suggest that the starting salaries and the relevant pay scales may not be competitive with those found both elsewhere in the public and in the private sector and would draw only inexperienced staff. In addition to which, the Scottish Government do not have the type of salary reduced ‘training grade’ (as explained above) that operates within COPFS.

FDA is concerned therefore that despite the welcome efforts of the Department to recruit more staff, at best this will not be a quick process and at worst it may not be possible to recruit in the numbers hoped for.

We are pleased to confirm that there is a positive and constructive relationship in COPFS between the Trades Unions and senior management and we operate on the basis of a Partnership Agreement. As part of our regular and ongoing dialogue with them we were aware that a business case for additional funding had been submitted for consideration by the Cabinet Secretaries for Justice and Finance. It was made clear to us during that process that the business case related to the recruitment of additional staff, not for greater increases in the pay of existing staff. FDA wishes to make it clear to Ministers that we consider the failure to remunerate staff within COPFS on a comparative basis with lawyers in other parts of Scottish Government demonstrates that they do not properly value the work undertaken by Scotland’s prosecutors.

There is value in the work undertaken by colleagues across the Scottish Government, but how can it 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 final observation in relation to the additional funding and in respect of the budgets for 2019/20 and in subsequent years is that this will only really be transformative if that level of commitment by Scottish Minister is maintained and developed in the future. The announcement of additional funding this year was a welcome injection of additional resource for COPFS, but it must not be a ‘flash in the pan’ boost and then followed by a gradual reduction in our budget.

3 Col. 562 , Justice Committee 2, Meeting 6th November 2001
The committee may recall that in previous discussions we have stated FDA’s position to be 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 have to match the service provision demanded of that organisation. This is true this year as much as in any year as questions will be asked about how those resources compare with demand and expectations of delivery. It follows therefore that either COPFS requires to be adequately resourced in this and subsequent years, or alternatively, political decisions are required of those in government to appropriately review the commitment required from the service and expectations of timescales for service improvement. There will be a choice about what they want the prosecution service of Scotland to deliver and when.