

Criminal Justice Committee

Pre-budget scrutiny 2025-26

Written submission by the Procurators Fiscal Section of FDA

The Procurators Fiscal Section of FDA welcomes the opportunity to provide evidence to the Justice Committee in respect of its scrutiny of the 2025-26 draft budget for COPFS.

FDA is the main trade union for legal and other professional staff and managers within the Crown Office and Procurator Fiscal Service (COPFS). Most legal staff in COPFS are members of FDA.

FDA acknowledges that COPFS have received increased in funding in recent years, which has enabled recruitment of additional staff to tackle the covid-related criminal case backlogs; the covid deaths investigations; and to meet the statutory obligations and the requirements of demand-led casework. This should however be contrasted against the period during which there was over a decade of very significant real-terms decline in COPFS funding. This had a correspondingly significant impact on COPFS' ability to meet reasonable public expectations in terms of service delivery. We would therefore caution that any return to such funding arrangements would put in jeopardy the improvements our members are working hard to deliver.

The position of FDA has always been that it is not the business of a trade union to dictate the details of any government's budget, but the resources available must match the commitment of service provision demanded of that organisation. It follows therefore that either:

- COPFS requires to be adequately resourced; or
- Political decisions require to be taken to review the priorities and outcomes required from the Service.

Increases in our workload

Increase in High Court cases

COPFS continues to operate in a complex and changing criminal justice system. The volume and complexity of the casework has changed and continues to grow. While overall criminal reports received are falling over time, there has been a significant increase in the number of more serious and complex cases, including unprecedented organised and economic crime cases which require dedicated teams to work on them. The number of Petitions (the more serious cases which are prosecuted in front of a jury, or in the High Court) has increased by around 25% since before the pandemic, and the number of cases awaiting trial is more than 100% higher as compared with pre-pandemic figures. In 2019/20 the average time between a Preliminary Hearing when a trial is fixed to evidence being led at the trial was 22 weeks. That delay is now 43 weeks.

Increase in Sheriff and Jury cases

Whilst it is undeniably a good thing for Scotland's communities that more serious crime is being detected and reported to COPFS, there is an obvious consequent impact on workloads. For example, Sheriff and jury trials are now around three times the volume of pre-pandemic. In 2019/20 the average time between a Preliminary Hearing when a trial is fixed to evidence being led at the trial was 11 weeks in the Sheriff Court. That delay is now 36 weeks.

Increase in Deaths reports

Whilst the number of deaths reported to COPFS has fallen since the pandemic, the 13,218 death reports received in 2023/24 is still 27% higher than the level received in 2018-19. In addition, the work of the covid deaths investigation team has not yet concluded.

Deaths investigation work is highly specialised and FDA members are working extremely hard to bring down the time scales for investigation and reporting in order to provide a timely service for next of kin. It is relevant that this work also relies on the services of external partners (eg. Police, Pathology and related forensic services, and occasionally other specialist reporting agencies). There have been delays in some cases and this has presented a reputational risk to the department, and therefore to our members. Additionally, pressures on SCTS and lack of court time has, on occasion, hampered the timely commencement of Fatal Accident Inquiries. This work is a key priority for COPFS and any reduction in staffing would jeopardise the progress and improvements that are necessary.

Increase in Sheriff Summary cases

The additional Summary Trial Courts that were established as part of the post pandemic recovery programme has seen a reduction in the number of outstanding summary trials (to 20,644), but this is still approximately 50% higher than pre-covid levels.

It should be appreciated that summary trials can also be very complex with CCTV evidence, forensic and digital evidence and with large numbers of productions to consider. Our members frequently report to us that they get little to no preparation time in advance of cases calling for trial – even in cases where they have been identified as requiring advance trial preparation. This is a source of enormous stress for our members.

Committee members may be aware of the recent publication of the Summary Case Management (SCM) Pilot report [scm-final-evaluation-report.pdf \(scotcourts.gov.uk\)](https://scotcourts.gov.uk/scm-final-evaluation-report.pdf), which evaluated a model for the management of criminal cases and involving all parties across the justice sector, designed to reduce the 'churn' and resolve more cases at an earlier stage in the court process.

Our members working in the pilot areas have reported that the SCM cases require more 'front-loading' and preparation at an earlier stage (with a consequent staff resource requirement at that stage). The findings of the evaluation report however found a significant reduction in the cases which then proceeded to trial. For example, it is estimated that 530 summary trials did not require to be fixed in the pilot courts,

as a result of early resolution due to SCM. It is further estimated that if SCM had been in place at a national level during the pilot period, 3,270 trials would not have been fixed.

In terms of benefit to criminal justice partners, in the pilot, approximately 11,000 police officers did not require to be cited as witnesses. It is estimated that with a national roll-out, that figure would have been 50,000.

It is therefore anticipated that with the roll-out of SCM to other areas in Scotland, the resolution of more cases at an earlier stage, members will eventually benefit in terms of fewer cases proceeding to trial; there will however be a transitional period of time whilst the new systems and approaches are implemented (with sufficient staff resources being required).

We are supportive of anything which improves the experience of our members, the public and all criminal justice stakeholders, but remain concerned about the capacity of our members to deliver the transformation and improvements if COPFS had fewer staff.

Legislation, Inquiries and other relevant factors

In April 2024 **His Majesty's Inspectorate of Prosecution in Scotland** published a report in respect of domestic abuse cases dealt with at Sheriff Summary level ([The prosecution of domestic abuse cases at sheriff summary level | HM Inspectorate of Prosecution in Scotland \(prosecutioninspectorate.scot\)](#)). The report made 27 recommendations, which COPFS have committed to implementing. These recommendations aim to improve communication and service to victims of abuse.

It is worth noting that this report highlighted the lack of preparation time for Procurator Fiscals Depute as being a key factor in cases with poor outcomes. Those cases in the specialist Domestic Abuse Courts benefitted from fewer trials listed and more preparation time available. The lack of preparation time is an issue which FDA members raise consistently and is a source of considerable stress.

In July 2024 the **UN Convention on the Rights of the Child** came into force in Scotland and implementation has affected how COPFS processes cases which involve children. There are a significant number of additional steps required in relation to the recording of decisions in such cases and this also significantly increases the time required to prepare a case involving children. Mandatory training for all staff has been required and delivered.

FDA is aware that the **Victims, Witness, and Justice Reform (Scotland) Bill** seeks to try to improve the experience of victims and witnesses in the justice system, but it will also impose additional requirements on COPFS staff as a consequence.

We expect the **Sexual Offences Review Report**, commissioned by the Lord Advocate in December 2021, to soon be published. We understand the report will make a number of recommendations to improve the way in which reports of sexual offences are dealt with but will likely increase the time and responsibilities of those staff dealing with such cases.

The **Lord Advocate's Reference (1 of 2023)** has clarified the evidential requirements to corroborate an offence, this has an impact on all crimes but the most significant impact will be on the ability to prosecute serious sexual offences. This will allow more cases to be prosecuted (which otherwise would not) and thereby further increase workloads particularly in High Court level serious sexual offences.

As at today's date, the extension of operation of the [Coronavirus \(Recovery and Reform \(Scotland\) Act 2022](#) is due to come to an end in November 2024. As members of the Committee may be aware, this legislation provided for temporary extensions to criminal procedure time limits. Given the current numbers of outstanding High Court and Sheriff and Jury cases, there is absolutely no prospect of getting through all the cases before the end of the time-bar extension. If the legislative time limit is not extended, it will simply result in the courts being flooded with applications to have each case extended separately – with the obvious consequent impact that will have on already busy court workloads.

As already observed, COPFS is an organisation that is 'demand-led' and is required to adapt to those changing demands. In addition to the criminal prosecution and deaths investigation responsibilities, increasing dedicated resources have been required for inquiries, such as those for **Sheku Beyoh, Emma Caldwell, the Scottish Child Abuse Inquiry, and the Eljamel Inquiry**. There is also a team attached to tracking and interacting with the **Scottish Hospitals Inquiry viz Queen Elizabeth University Hospital and the Scottish Covid-19 Inquiry**. Staffing this important work does however take resources away from other core business areas.

Pay

Members of this committee may know that FDA campaigned for many years to address the inequity of the pay disparity between our staff and those employed in comparative jobs within Scottish Government. It is a matter on which we have given evidence to this committee on several occasions. It is therefore right to acknowledge and welcome the additional funding that was provided to COPFS to address this matter. It should also be noted that a commitment was given as part of that deal that COPFS salaries would "keep pace" with those offered in comparative roles in Scottish Government. No mechanism has yet been agreed with COPFS to ensure that commitment is delivered upon, but FDA will continue to advocate on behalf of members in all negotiations on pay matters.

In addition to the terms of the above pay deal, FDA and other public sector trades unions successfully negotiated with Scottish Government and COPFS the implementation of a shorter working week (reducing from 37 to 35 hours, effective 1st October 2024). Whilst this is a welcome development, there is an anxiety from FDA members about the capacity to deal with the additional workloads mentioned above.

Training and development

There has been increased investment into the work of the Scottish Prosecution College. We have observed above regarding the continuing legal and legislative developments which require ongoing training and development of our staff. Unfortunately, many of our members report to us that they either cannot get booked in to attend the essential training courses (because they are full), or when spaces

arise, they cannot be released by their operational units to attend due to workload and court rota pressures.

It is relevant to note that not only has the High Court Unit seen a real terms increase (of around 25%) in the number of High Court Petitions, many newer and relatively inexperienced members of staff have been deployed to this area of the Service. FDA has questioned how appropriate it is to have some of the least experienced staff being asked to undertake some of our most serious work.

There is a duty of care held by COPFS as an employer to ensure the wellbeing of staff and due to continuing resourcing pressures, it is challenging to rotate staff in and out of this work as frequently as would be optimal. There is a real risk to staff mental wellbeing where the work has recognised links to vicarious trauma and high levels of stress. COPFS requires to have sufficient resources available to allow staff to rotate around the Service; this has multitude of benefits including meeting a statutory need to protect staff wellbeing, upskill, and develop staff in an appropriate and measurable way.

FDA believes that the current challenging operational and staffing pressures which exist within the organisation means that staff rotation is not being prioritised. It is unfair on the individuals who are precluded from getting a critical foundation legal experience and moreover carries a significant risk to the Service.

FDA has significant concerns about the obvious risks to the wellbeing of individual members and reputational risks both for staff and to COPFS; the consequences can be devastating to individuals, their confidence and their career development.

Wellbeing

Latest COPFS figures show 9.9 average working days lost (AWDL) due to sickness absence. 36.4% of absence is attributed to mental ill health and of that more than a quarter is officially described as being due to work-related stress.

FDA acknowledges the steps taken by COPFS to provide increased focus and support on mental health and wellbeing, and the intention to provide more training and support to line managers. Whilst this has a place, FDA also believes that that this alone is insufficient to address the 'elephant in the room' - the need to proactively address significant increased workload pressures.

Members have reported to us that they are struggling with increased workloads and many providing long-term cover for staff vacancies and other absences. Some have had annual leave requests refused (or given late response) due to pressures to fill court rotas and cover for urgent and time pressured work. This has resulted in a detrimental impact on their morale and wellbeing over recent months, leaving them feeling overwhelmed and anxious.

Our members are committed and hard-working professionals, although worryingly many also report working regular excessive additional hours to manage increased workloads (for which they are not paid and not able to take flexi/time off in lieu because it exceeds the maximum permitted limit).

Budget implications

Staff costs represent around 75-80% of COPFS costs and based on inflationary pressures alone, it will therefore cost more to employ the same number of staff in the year ahead.

Whilst overall crime may be lower than in the past, there is no sign of a reduction in levels of serious crime – to the contrary, as observed above, we are dealing with ever greater levels of serious crime; COPFS has contributed to the justice sector covid court recovery programme and there is a very real risk that public confidence in the criminal justice system would be undermined if COPFS had to reduce staffing levels. As outlined above, it would be impossible to maintain service improvements; victims of crime would not have their cases dealt with within reasonable timescales and deaths investigations would continue to be delayed for unacceptable periods.

FDA has set out above why we believe it is necessary to, at least, maintain current levels of staffing in COPFS and we would invite committee members to make representations to their Parliamentary colleagues to that effect. The alternative would require a political decision to determine what work is slowed down, shelved or stopped completely.