

Criminal Justice Committee

23rd Meeting, 2022 (Session 6), Wednesday 7 September 2022

Correspondence received during recess

Note by the clerk

Purpose of the paper

1. This paper invites Members to consider a number of items of correspondence received by the Committee (see **Annex**) over the summer recess, namely:

From the Scottish Government

- Letter from the Minister for Community Safety in relation to **legal aid** (page 4);
- Letter from the Scottish Government outlining its plans following the consultation on the **not proven verdict** and other matters (page 22);
- Letter from the Minister for Drugs Policy on the new **National Drugs Mission Oversight Group** (page 23);
- Further letter from Angela Constance on the **publication of the National Mission Plan** (page 25)
- Letter from the Cabinet Secretary for Justice and Veterans on the **funding for recovery cafés** in Scottish prisons (page 26).

From the Scottish Prison Service

- Letter from SPS on **access to fresh air** (page 27);
- Letter from SPS on the **issuing of medical slips to prisoners on their liberation** (page 28).

From others

- Letter from the Crown Agent on **centralisation of case marking** (page 29);
- Letter from COSLA on the **funding for secure care** (page 31)
- Letter from the Scottish Fire and Rescue Service on the **use of Naloxone** (page 33)
- Letter from Martyn Evans, Chair of the SPA about **changes to the police pension scheme** (page 34) and a letter from David Page, Deputy Chief Officer, Police Scotland (page 36)

- Letter from Police Scotland on tackling online child abuse, grooming and exploitation (page 39)

Action

2. **Members are invited to consider the correspondence and any suggested follow-up and discuss what action, if any, they wish to take.**
3. For the convenience of Members, suggested follow-up for each of the letters is as follows:

Scottish Government	
Letter from the Minister for Community Safety in relation to legal aid	To note the contents of the letter, incorporate consideration of the financial issues into this year's budget scrutiny and keep track of the Minister's commitment to write to the Committee about reviewing the Public Defenders Solicitors Office
Letter from the Scottish Government outlining its plans following the consultation on the not proven verdict and other matters	Note the contents of the letter and continue to monitor progress towards the introduction of legislation on this matter due in 2023
Letter from the Minister for Drugs Policy on the new National Drugs Mission Oversight Group	Note the contents of the letter and use the information provided as part of the Committee's scheduled meeting of 15 September with the Health and Social Justice committees to review progress on tackling drugs deaths in Scotland
Letter from the Cabinet Secretary for Justice and Veterans on the funding for recovery cafés in Scottish prisons	Note the contents of the letter, note that the reply does not provide an explicit commitment to funding "a recovery café in each institution where appropriate" and consider the matter again as part of the year's budget scrutiny as well as the periodic review of the Committee's Action Plan and its priorities for improving the justice sector in session 6. Note there is a recommendation in the final report of the Scottish Drug Deaths Taskforce to "expand the recovery cafes/hubs across the prison estate, developing these into recovery communities that effectively support people who use drugs".
Scottish Prison Service	
Letter from SPS on access to fresh air	To note the contents of the letter and continue to keep the situation under periodic review as part of the Committee's Action Plan
Letter from SPS on the issuing of medical slips to	To note the contents of the letter and take up the issue with NHS Scotland and review progress

prisoners on their liberation	through the periodic review of the Committee's Action Plan
Others	
Letter from the Crown Agent on centralisation of case marking	Members are asked to consider the response and what, if any, further action they wish to take
Letter from COSLA on the funding for secure care	To note the contents of the letter and the 6-month trial of a new short-term funding model, and review progress of this issue through the periodic review of the Committee's Action Plan
Letter from the Scottish Fire and Rescue Service on the use of Naloxone	To note the contents of the letter and note that the Committee had asked for "details of the number of staff who have volunteered to administer Naloxone [and] any analysis of the impact of their interventions to date. The response would suggest no volunteers are currently in place as this is to be part of a second phase
Letter from Martyn Evans, Chair of the SPA about changes to the police pension scheme and the letter from David Page, Deputy Chief Officer, Police Scotland	To note the contents of the letters and, in particular, the information provided by David Page which maybe be useful for the Committee's forthcoming budget scrutiny
Letter from Police Scotland on tackling online child abuse, grooming and exploitation	To note the contents of the letter

4. Members may also want to note that the clerks have contacted the Cabinet Secretary's office to ask about a response to the Committee's letter on **charges for access to court transcripts for survivors of rape and sexual offences**.

**Clerks to the Criminal Justice Committee
September 2022**

Annex

Letter from the Scottish Government on legal aid (28 June)

Dear Convener

During my appearance before the Committee on 2 March 2022 it was agreed that I would write with further information on points raised during that discussion and respond to questions posed by the Law Society of Scotland in its letter dated 1 March 2022 to the Committee. I regret that this has taken longer to provide than anticipated. You will be aware that this is a fast moving and challenging time and it was important to provide the most up to date information.

During the session on 2 March a number of points were raised and these were:

- 1) The background to the setting of current fee levels;
- 2) Legal aid expenditure and the link to court business and applications;
- 3) A fall in numbers of solicitors registered to conduct legal aid;
- 4) The challenges in recruitment and retention of solicitors reported by the legal profession.

The **Appendix** to this letter is structured around addressing these four points in further detail.

The key initial point I would like to make is on the complexity of the operation of the legal aid system, for both those that need the services provided by the system and those that provide these services. We have been committed to developing a more simplified system that addresses the application process and the fee setting and fee claiming process. Where possible we have aligned changes in fees, for example moving to block or fixed fees, simplifying the system. That has had additional benefits in streamlining the administration of the system for Scottish Legal Aid Board and solicitors.

Secondly, I'd like to recognise the historical nature of the fee structure we are working with. Many fees were set as a result of negotiation with and compromise by all parties, and were set in the financial landscape of that time. The basic foundation for fees on which subsequent uplifts have been negotiated is obscure and it is unclear if this foundation was initially fair or not. The intention behind the Legal Aid Payment Review Panel, created under a recommendation made in the Martyn Evans' independent strategic review 'Rethinking Legal Aid', was to understand the current context within which the legal aid system must operate and to develop an evidence and data based approach to set the rates of payment for fees and a process for reviewing fees. Therefore, the collection of evidence and data is critical to developing a sustainable and affordable legal aid system that meets the needs of all who are involved in it. That is a priority issue for Scottish Government moving forward, and we require the full engagement and co-operation of the legal profession to develop that evidence base. This will also enable us to understand and better address the issues around recruitment and retention and the link between legal aid rates offered and salaries actually paid by partners to employees.

Thirdly, I'd like to address the link between legal aid expenditure and rates of fees. Legal aid expenditure is demand led and determined by the number of legal aid applications made, the types of cases for which legal aid is provided, the scale of personal contributions made by those who receive legal aid, and issues such as the value of expert fees, volume of child welfare reports requested by the courts and costs awarded. It is therefore not accurate to make a direct link between levels of expenditure and fee rates. The level of income gained from legal aid work will largely depend on the volume of legal aid work available, volume of work undertaken, and the types of cases. The number of solicitors undertaking legal aid work also contributes to the achievable income of solicitors.

Finally, as you are aware we are in the midst of negotiations with the profession on further fees increases, and we are also dealing with a range of disruptive action that is intended to demonstrate the dissatisfaction of the profession. Through these negotiations we have moved from a position that only a 50% increase in fees would be acceptable to the profession to one where we are actively discussing a settlement that would involve a combination of overall uplifts and targeted fee increases. These are currently under consideration and I will ensure that the Committee is kept abreast of developments on this issue. For the avoidance of doubt, I am under no illusion at all as to the strength of feeling across a profession that feels demoralized and undervalued despite the action we have taken. I have heard what the profession has been saying over the last two years (and indeed longer) and have thought carefully about the wide range of inter-connected issues raised by the profession and sought to target funding to areas of concern. As I have set out previously, whatever settlement is reached has to be affordable within the overall challenging financial context in which we are operating.

The appendix to this letter provides further information and data on each of these issues. I would be happy to provide further clarification if that would be helpful.

I am also aware that the Committee has asked Scottish Government to review the Public Defenders Solicitors Office and to consider additional roles for it. I will also provide a further update to the Committee on that specific request in due course.

Ash Regan

Appendix to letter

Further information on Legal Aid provided to the Criminal Justice Committee, Scottish Parliament, June 2022

Section 1: Outline of historical fee movements

Among OECD jurisdictions, Scotland has the third highest legal aid per capita spend. England & Wales and Northern Ireland have higher per capital legal aid spend but have to cover high costs related to long-term terrorism and fraud cases. Most

jurisdictions tend to manage legal aid expenditure by limiting the amount or the scope of legal aid that can be claimed.

A review of international practice in legal aid demonstrated that Scotland is generous in both. The legal aid budget is not capped – all qualifying claims are met, and it has much wider scope than, for example, in England & Wales where cuts have left many areas of civil law such as family, housing and immigration largely out of scope.

Tracking fee rates over time is not straightforward. Uplifts have come at different times for different aid types, and fee types, and have often been accompanied by reforms that either simplified the system for solicitors, reflected changes in court process or responded to the needs of the profession.

Given the complexity of the structure and history of legal aid rates and reform, it is very difficult – and can be misleading – to make generalised historical comparisons. Even apparently straightforward comparisons of individual fees can obscure hugely significant changes in the surrounding context.

Historic comparisons based on inflation over-simplify the legal aid system and do not take into account the scale, nature or context of intervening changes. They also assume that inflation is a valid measure for the uprating of fee levels, itself an approach rejected by the Legal Aid Payment Review Panel¹ ('the payment panel').

The background to the current position on legal aid fees is complex for several reasons:

- The number of different rates²: There are dozens if not hundreds of individual fees for different activities (meetings, telephone calls, letters, perusal of documents, framing of statements, travelling, waiting, appearing in court etc.) as well as a variety of fixed payments or block fees³ payable in some circumstances for cases, or steps taken, or stages of work.
- Each fee or block may vary depending on whether the matter is civil, children's or criminal, the type of legal aid, the level of court, the type of case, the procedure adopted, whether a civil case is defended, whether the accused pleads guilty or not guilty etc.
- Changes over time in the number and type of fees: Legal Aid is subject to constant change. Some detailed fees are discontinued or merged or replaced by block or fixed fees, others are created or expanded, new procedures are provided for, completely new areas of work are catered for.

¹ [Legal Aid Payment Review Panel: report to the Minister for Community Safety - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/legaid-payment-review-panel-report-to-the-minister-for-community-safety/pages/10.aspx)

² [Table of fees - Scottish Legal Aid Board \(slab.org.uk\)](https://www.slaborg.uk/fees)

³ Block fees - a fixed fee payable for a bundle of work, generally taking no account of the amount of time actually spent doing the work. This remunerates the solicitor on a "swings and roundabouts" basis – while they may be overpaid in some cases and underpaid in others, this should work out in the round. It is also generally easier to administer accounts, both for the solicitor and for SLAB.

Different fee levels have been subject to review and change at different points in time. Prior to the across the board increases of 3% in 2019, 5% in 2021 and 5% in 2022 (totalling 13.6 % compounded), changes in fees had either been reactive to specific external changes (such as the extension of rights to advice in police custody in 2018) or delivered via substantial fee reforms exercises (summary criminal legal assistance in 2008, solemn criminal legal aid in 2010, civil legal aid in 2003).

Unfortunately, much of the recent debate has treated this complex picture as if it were straightforward, resulting in claims for increases that lack foundation or evidential basis. That said, the Scottish Government recognises that the timing of fee reviews has been sporadic and unpredictable and that the rationale for the structure and level of fees both now and at almost any point in history is opaque at best; a point acknowledged by the payment panel.

Fee increases fall into two main types: broad percentage increases applied across the board to all fee rates, sometimes linked to inflation; and increases to specific fees often linked to legal aid reforms.

Broad percentage increases

As mentioned to the Committee in March, the background to the current position on legal aid fees is complex, with a combination of negotiations leading to the final position on fee rates and a need to reduce public sector spending in response to the economic downturn in 2008.

Most fees were updated on a number of occasions between 2003 and 2010, and all fees, across all aid types, were updated again in 2019 (3%), and 2021 (5%) and a further 5% came into effect in April 2022 has now been applied.

A percentage uplift costs the Legal Aid Fund broadly £1.25m per one percent.

Specific fee rate reforms

Civil block fees

Between 2003 and 2009, civil legal aid rates were updated significantly: the initial increase of 21%, which was accompanied by the development of the block fee system, was calculated by reference to inflation since the previous increase in 1995. A number of adjustments to the block fee structure were made over the next five years, adding significant further sums for specific types of case, and then both the unit rate and detailed fees were again uplifted by inflation in 2009 (backdated to 2008).

Solemn criminal fees

Solemn criminal fees were also uplifted over a similar timescale and in a similar way i.e. via a number of packages that looked separately at advocacy and other fees and then culminated in the block fee system finally going live in 2010. By that point all aspects of solemn fees had been updated in line with inflation since the early 1990s

Summary criminal fees

There has been a lot of focus – most recently in the Scottish Solicitors Bar Association's (SSBA) submission to the Committee – on the summary criminal fixed

fee, no doubt because this single fee accounts for a higher share of legal aid expenditure than any other. Simple comparisons between the fee now payable and that paid when it was first introduced in 1999 appear to form the basis of the profession's argument for a 50% increase in all fees. Quite apart from the fact that many other fees have already been uprated by more than 50% since 1999, the position in respect of the fixed fee has been overly simplified such that the conclusions reached can be misleading. It is therefore important for the Committee to be aware of the full context in which the summary criminal fixed fee should be seen.

The funding arrangements for summary work are fundamentally different to those in place in 1999 when the original fixed payment system was introduced. The intervening reforms therefore mean that fees for summary work have to be looked at in the round. For example, the increase in ABWOR⁴ fees from £70 to £515 in 2008 (an increase of 735%) is possibly the single most significant fee change of the last 20 years and is an essential but often overlooked part of the context for the summary criminal legal aid fixed payment.

Summary criminal legal aid payments have been reformed on a number of occasions. The initial move to fixed fees in 1999 was designed to reverse the substantial growth in costs seen throughout the 1990s and which led to significant reforms both in Scotland and England and Wales. The independent evaluation of the fixed fee regime concluded that changes in behaviour (more work billed under advice and assistance detailed fees, more cases pleading not guilty and therefore attracting the £500 fixed fee rather than the £70 ABWOR block fee) meant that the intended savings had not been achieved and, if anything, overall fee income had increased for those specialising in criminal legal aid work.

Summary justice reform in 2008 sought to address this, not by cutting fees back to the intended level, but by fundamentally shifting the balance between different aspects of the fee regime applicable to summary cases depending on the path they took through the justice system. As such, any reference to the pre-2008 fee structure or level is now largely irrelevant.

The core element of the summary justice reform changes was the alignment of the fees for guilty and not guilty pleas in the sheriff court. This very significantly increased the fees payable under ABWOR for guilty pleas, from an initial block of £70 to £515. The scope of ABWOR was also increased such that named solicitors could represent clients pleading guilty from custody. Prior to SJR, only duty solicitors could do so and were paid £47.95 for the first case in any session and £6.48 for any subsequent case. Named solicitors could now do so at a rate of £515 per case.

Duty solicitor payments were also increased, to £63 and £9 respectively. Significantly, a new fee of £70 was introduced for duty solicitors where the client pled guilty – payable in full for every such case. Finally, advice and assistance fees were increased by 10% and the fixed fee (payable in both guilty and not guilty scenarios) was increased by £15.

⁴ Assistance By Way Of Representation: assistance given to a person by taking on his behalf any step in the conduct of proceedings before a court or tribunal under legal advice and assistance scheme.

These very significant enhancements were a result of extensive negotiations and consultation with the profession. As a trade-off for these increases, and to help simplify the system, two other changes were made, as noted by the SSBA: the additional fees previously payable in respect of the first two diets of deferred sentence were rolled into the fixed fee, as were any fees payable in respect of advice and assistance provided prior to a grant of ABWOR or legal aid. This simplified the claiming process and meant that in the majority of cases, only one simple account would need to be prepared.

In some cases, the net effect of the changes was that the payment would be lower, while in others it would be substantially higher. The package as a whole was designed to support the early resolution of cases where possible and to deliver an overall net increase in per case fees payable, in part to soften the impact on the profession of an expected reduction in business levels resulting from the wider package of reforms to the summary criminal justice system (these had been projected to result in a significant reduction in legal aid expenditure due to more diversion, more cases being prosecuted at lower levels, and more cases resolving at an earlier stage).

Given this history, there is little merit in any argument for a given level of increased fee based on simple comparisons between the pre-2008 fees and those payable today. To focus on this alone is to ignore the context and present a selective argument that isolates one part of an integrated system while seeking to preserve the benefit of the wider reforms to the overall summary package. If the 1999 fixed payment were to be revisited by reference to inflation, so then logically must the 1999 ABWOR and duty fees – all of which would, on that basis, lead to significant reductions as these fees were increased significantly above the applicable inflation rate.

Reforms to legal aid during austerity

Reforms were made to legal aid during the period of austerity in response to the need to reduce public sector spending in the context of the economic downturn after 2008. The Scottish Government's approach of reducing costs by expanding the role of the Public Defenders Solicitors Office was rejected by the Law Society Legal Aid Negotiating Team in favour of reductions to specific legal aid fees and an agreement for the SG to limit the activities of the PDSO. A paper published by the Law Society of Scotland (LSS) on these issues is available if required.

The 2011 savings package sought to reduce summary fees by a total of around 10% through a combination of reductions in the core fee, payment of a lower fee for cases in the stipendiary magistrates court and payment of a half fee where the duty solicitor acted initially.

A significant part of this package was effectively reversed with the abolition of the stipendiary magistrates court in 2016 as cases within that category would now receive a Sheriff summary level of fee. A very significant reduction in the number of cases being represented by the duty solicitor in the intervening years has also meant that the half fee applies far less often than when the change was first made (and aspects of this have in any event been suspended since the start of the pandemic). These measures have been fully reversed following 2021's 5% fee rise and the summary and ABWOR core fee are now higher in cash terms than the pre-2011 value.

Hourly Rates

Members have referred to static hourly rates⁵, and we have also seen complaints on social media about low hourly rates in specific cases.

There are many different hourly rates chargeable under different legal aid schemes, and these often exist alongside block, inclusive or fixed payment arrangements, many of which were introduced after 1999. To take a few key hourly rates by way of example:

- The general non-advocacy hourly rate under civil legal aid was £43.60 in 1999. It is now £66.04, an increase of 51.5%.
- The civil legal aid advocacy rate was £56.40 in 1999 and is now £85.40, an increase of 51.4%.
- The general non-advocacy hourly rate for solemn criminal legal aid was £42.20 in 1999. It is now £55.44, an increase of 31.4%.
- For solemn legal aid, the advocacy rate was £54.80 in 1999. It is now £83.16, an increase of 51.8%.

The specific examples of low hourly rates tends to derive from the operation of fixed or block fees, and particularly those payable in summary criminal cases. Fixed and block fee arrangements are based on a concept of 'swings and roundabouts', where the payment is the same for a case or stage of a case no matter the level of work. This means that in some cases requiring more than the average amount of time, the effective hourly rate will be lower than the average, but similarly in other cases, for example those resolving at first hearing, there will be less work and therefore a higher effective hourly rate. It is unhelpful to focus on extreme examples, as these tend to provide a distorted picture.

Inflation

In its presentation to the payment panel, the Law Society of Scotland set out options for automatic uplifts of fees, with a preference for inflation-based uplifts. This was discussed in some detail by the payment panel and was rejected as a tool for setting fees for a number of reasons. As already detailed in this paper, different fees have been reformed, increased or (less frequently) reduced at different times and by different amounts. No one flat inflationary rate could therefore be applied without boosting some fees above their historic value relative to other fees. For example, prior to the increase of 13.6% delivered over the last three years, solemn fees were last updated as part of a reform package in 2010. In contrast, fees for police station work were only created in 2018. A flat 50% increase to both fees would result in a significant imbalance, even assuming they were set at the 'correct' level initially.

This leads to a second problem with inflation: its use implies that the baseline was set at a correct level, and that neither specific fees nor the remuneration set at that original time were too high or too low. Just as we do not currently have access to objective data that would support the case for any given level of fee (for example in terms of the

⁵ [Official Report \(parliament.scot\)](#) pg 10

costs of delivery or the level of remuneration achievable by providers), nor was such data available or used when fees were set at any other point in time.

While it is clear that a widespread concern about rapidly rising levels of expenditure led to the criminal legal aid reforms of the 1990s – including the introduction of fixed fees – the kind of data we consider as vital to inform the current debate has to our knowledge been gathered on only two occasions, and on neither occasion was this used directly to inform the setting of fees.

A third problem with using inflation as a measure is that the costs of running a legal aid firm are not the same as the costs of living. An inflation measure based on the latter is therefore unlikely to accurately reflect changes in the former. For example, a large proportion of the costs of delivering a legal aid service are likely to be staff costs – which are themselves heavily influenced by firms' fee income – and professional costs (indemnity insurance, practicing certificates, regulators' levies etc.). Changes in the costs associated with such items may or may not vary in line with wider measures of inflation.

Perhaps most significantly, uprating based on inflation assumes that the baseline represents a sector operating at optimal efficiency. If fee income can be relied upon to increase with inflation, this provides little incentive for a business – or a sector as a whole - to either reduce its running costs or increase its productivity. In other words, unless the businesses delivering legal aid services are already as efficient as they can be, automatic inflationary increases 'bake in' inefficiencies and result in the taxpayer paying more than it should.

Few public budgets are index linked, for reasons of affordability but also to drive efficiencies on the part of public services. Public services are expected to pursue efficiency and best value strategies such as collaborative procurement, shared services, digitisation and automation, delayering, estates reviews, headcount reductions etc, rather than assuming that all baseline costs will be covered by inflationary budget increases. Wage bills are also tightly managed via workforce planning and centrally set public sector pay policy.

Many firms will of course have pursued similar strategies to the extent that this has been possible at an individual firm level, but there is little evidence of the kinds of shifts (mergers, acquisitions, consolidation, restructures, diversification of services, market exit etc) in the supplier base that have been seen in the commercial sector, for example, in pursuit of innovation and efficiency.

Legal Aid Payment Review Panel

In 2018 Martyn Evans published his Independent Strategic Review of Legal Aid. He found he was unable to make recommendations on legal aid fee levels due to the lack of financial data available about the legal profession.

A similar problem faced the Independent Review of Criminal Legal Aid in England and Wales (Bellamy Review). The recommendations of that Review were informed by a data compendium of information on publicly funded criminal legal services that drew together information from the Law Society of England and Wales, the Bar Council, the

Legal Aid Agency, the Crown Prosecution Service and the Ministry of Justice. This combined information on publicly funded legal aid case payments with information on the characteristics of law firms, their solicitors, and barristers that receive legal aid payments. The Review was also informed by a financial survey responded to by around 100 criminal legal aid firms on profitability and salary levels.

On Martyn Evans' recommendation a Legal Aid Payment Review Panel was convened with the participation of the legal profession, to consider the current model and how periodic reviews could be carried out. The payment panel rejected inflation as a valid measure for increasing fee levels⁶, and recommended an evidence based approach which took account of a number of factors such as:

- The actual and expected remuneration of legal aid providers under the existing system
- The conditions needed to secure sufficient supply to enable the effective delivery of legal aid services at a scale and quality consistent with needs and in line with legal aid policy and strategic justice and social outcomes
- The development of metrics to assess the 'health' of the legal aid sector
- Measures that can be used to assess legal aid fees from year to year

This is why the payment panel recommended that independent research be commissioned to consider similar elements as Sir Christopher Bellamy QC looked at in England and Wales. The Scottish Government is working on the specification for this however without the input of the legal profession this will not produce meaningful results.

Throughout all of the reviews it has been difficult to ascertain what would be a reasonable base level for legal aid fees which would take into account the costs of operating a business, given the wide variety of business models and mix of different legal aid funded activities within the current system.

Progress on this has been interrupted by the Covid pandemic and more recently by work on negotiations and management of disruptive action. It remains a critical and vital element of our work on reforming the legal aid system and will form the foundation for evidence informed approaches to setting fees, and a process for regular reviews. Therefore our key priorities are to:

- Finalise work on placing a contract for work to gather information and data
- Review the outcome of that research
- Agree a model for setting payment levels
- Agree a model for regular reviews
- Agree a model for maintaining the data base

This work will require the engagement of the profession in sharing its information and working with the Scottish Government to agree how it will be used in future. It is hoped we can reach an agreement with the profession to participate.

In summary, this section demonstrates the following points:

⁶ [Legal Aid Payment Review Panel – Report to the Minister for Community Safety \(www.gov.scot\)](http://www.gov.scot)

- That assertions that legal aid rates have not increased or kept up with inflation over long-periods are inaccurate. Prior to the recent across-the-board increases, the correct starting point for civil legal aid rates is 2009 and for criminal legal aid rates is 2010. This complicated history suggests that any baseline earlier than 2008 for summary, 2009 for civil and 2010 for solemn fees is misleading.
- That hourly rates are an inaccurate measurement of legal aid fee rates because the specific summary fee being focused upon by the profession is payable per case, not per hour; whereas key detailed fees have increased by in excess of 50% an hour;
- That the payment panel, in which the legal profession participated, agreed that inflation-linked was not a useful measure of legal aid and that inflationary linked rises have no historical basis.
- That assertions made about specific legal aid fee rates as identified above and used as examples to demonstrate an overall lack of legal aid fee increases are not accurate;
- That the Scottish Government has sought to target the funds available to address specific concerns raised by the legal profession.

Section 2: Legal aid expenditure and the link to court business and applications

Legal aid systems across the world are grappling with the sustainability of legal aid in the face of an increasingly challenging global financial climate. As a demand-led service, it is critical that the cost of delivering legal aid should be fair to those that deliver the services and also achieve best value for the public purse. Scotland is highly regarded internationally for its ability to maintain scope of provision, which has been a central priority, while other jurisdictions (such as England and Wales) were making dramatic cuts in scope to reduce legal aid expenditure.

Being demand-led and uncapped means that expenditure from the Legal Aid Fund is driven by the number of applications for legal aid in a financial year i.e. case work. Therefore suggestions of “cuts” or “savings”⁷ to the Legal Aid Fund misunderstand the nature of it. Except for as detailed above in relation to specific fee reductions proposed by and agreed with the legal profession, there have been neither cuts nor savings, the case work has simply reduced over the last decade leading to a drop in expenditure.

Since 2010 the reduction in crime has been echoed in the number of criminal case reports reported to Crown Office and Procurator Service (COPFS) - decreasing by 36% prior to the pandemic. While the number of reports did reduce even further during 2020-21 this was a trend that had already been present for over a decade. The reduction in case reports naturally leads to a reduction in expenditure. As the table below highlights, over the preceding 7 years prior to the pandemic, the reduction in

⁷ [Official Report \(parliament.scot\)](#) pg4

cases proceeding to court has not been matched with a corresponding drop in legal aid expenditure, suggesting that earnings per case have increased while overall levels of cases have dropped.

	2014/15	2019/20	% Difference
Total grants of criminal legal assistance by SLAB	136,324	116,314	-16%
Crimes recorded by the police	771,000	498,000	-35%
Total criminal reports received (COPFS cases)	303,221	170,000	-33% -
Total criminal cases marked for proceedings	181,727	117,831	-35%
Active firms practising criminal legal aid	519	423	-18%
Amount paid	67,262,000	58,741,000	-13%

Much has been made of the one-off drop in expenditure in the period 2020-21 as a result of the pandemic. This does not constitute a saving. The work either did not take place or was delayed due to the impact of Covid and therefore only reflects accounts received – largely in relation to cases concluded - in that financial year. Delayed cases will continue through court in the coming months and payment for those will be made accordingly. As the backlog of cases filters through the courts over the next couple of years, much of the work that would otherwise have been undertaken during the pandemic will fall to be paid (and paid subject to one or both of the intervening 5% increases in fees), resulting in significant increases in expenditure. The growth in business – and particularly solemn business - that started, but could not be concluded, during the pandemic period will further push expenditure upwards. While different areas of business saw contrasting trends during the pandemic, the primary impact of Covid on the legal aid fund as a whole is likely to be in the timing of payments between years, rather than an overall reduction in expenditure.

Furthermore, due to the significant drop in cases falling payable during 2020-21, the Scottish Government provided £9 million in additional funding to the profession in the context of the Covid pandemic, through grant awards that have been paid to a total of 419 firms across Scotland. Award sums differed depending on the circumstances of the firm (including other areas of income such as furlough payments for staff), but ranged from an average of £10,452 to firms in the lower banding to £67,971, on average, for firms in the highest banding. Some recipients received significantly more than the average. On top of furlough payments, local authority grants and other interest free loans available to businesses during the pandemic this funding was intended to provide additional support to active legal aid firms, and was initially well received by solicitors. While this cost was contained within that financial year, it should be noted that the recent additional percentage uplifts of 5% and 5% are continued recurrent spend and will increase legal aid expenditure annually.

Section 3: A fall in numbers of solicitors registered to conduct legal aid

The Law Society of Scotland has highlighted its concern at a reduction in numbers of legally aided providers, particularly in criminal defence. While it is correct that there has been a reduction in firms and solicitors providing criminal legal aid services over the last 8 years it is linked to the significant fall in demand (as per table above).

The measure used by the LSS to highlight issues with access to solicitors is the legal aid register. This is a construct of the legal aid legislation and is something that SLAB is obliged to publish. However, it is not an accurate measure of supply. Solicitors can decide not to take on legal aid work, even if they are registered. This may be due to their workload at the time or for a range of other reasons. Firms are entitled to take on as few or as many cases as they choose and to cover a wide or narrow range of types of case. SLAB has no control over this.

So not all firms on the legal aid register will be active, or equally active. This was true in 2010, as it is in 2022. However, both the LSS and SLAB have asked firms and solicitors who were inactive on the register to reconsider their registration. This housekeeping has contributed over recent years to a seemingly larger reduction in solicitors on the register, reflecting the fact of the removal of many that had not been active in legal aid for some time.

The ongoing accuracy of the register is also reliant on firms informing SLAB if they have stopped offering legal aid. This does not always happen. SLAB periodically asks firms to tell them if the information on the register is still current.

The measure that should be used when considering supply is 'active' solicitors and firms. This means those solicitors and firms that have submitted one or more legal aid applications in a given period.

Active Criminal Practitioners

Period	Number
2014-15	1116
2015-16	1094
2016-17	1068
2017-18	1023
2018-19	983
2019-20	929
2020-21	813
2021-22	827

2017-18	469
2018-19	457
2019-20	423
2020-21	380
2021-22	374

Active Criminal Firms

Period	Number
2014-15	519
2015-16	512
2016-17	489

Since 2014 the number of active criminal legal aid practitioners has reduced by 289 (26%) and firms by 145 (28%).

As highlighted to the Committee, it is not known what effect the reduction in solicitors supplying criminal legal aid will have on those seeking representation. There is a considerable disparity between firms regarding the level of fee earnings and applications submitted, and analysis shows that the reduction in the number of firms has been concentrated mainly amongst those undertaking smaller amounts of criminal legal assistance work: between 2014-15 and 2021-22, the number of firms submitting 180 or fewer applications per year has fallen by 36%, while the number of those submitting more than 180 has fallen by 16%. The latter firms collectively submit 87% of all criminal applications. Taken alongside the substantial underlying reduction in business levels, this suggests that the reduction in supplier numbers is likely to have had very little impact on the availability of representation to those who need it. This is borne out by SLAB's surveys of criminal legal aid applicants, only 5% of whom report any difficulty in finding a solicitor.

Over the decades, the legal profession has become more specialised, and the same is true of many of those delivering legal aid services. Around 60% of those providing criminal legal assistance do so alongside other forms of legal aid – the remainder are criminal specialists (although may have other private business).

While the trend towards specialisation in the wider profession has led to a wide range of business models - from generalist high street firms to large international commercial firms employing hundreds of solicitors - the practice of criminal legal assistance remains largely the preserve of smaller firms.

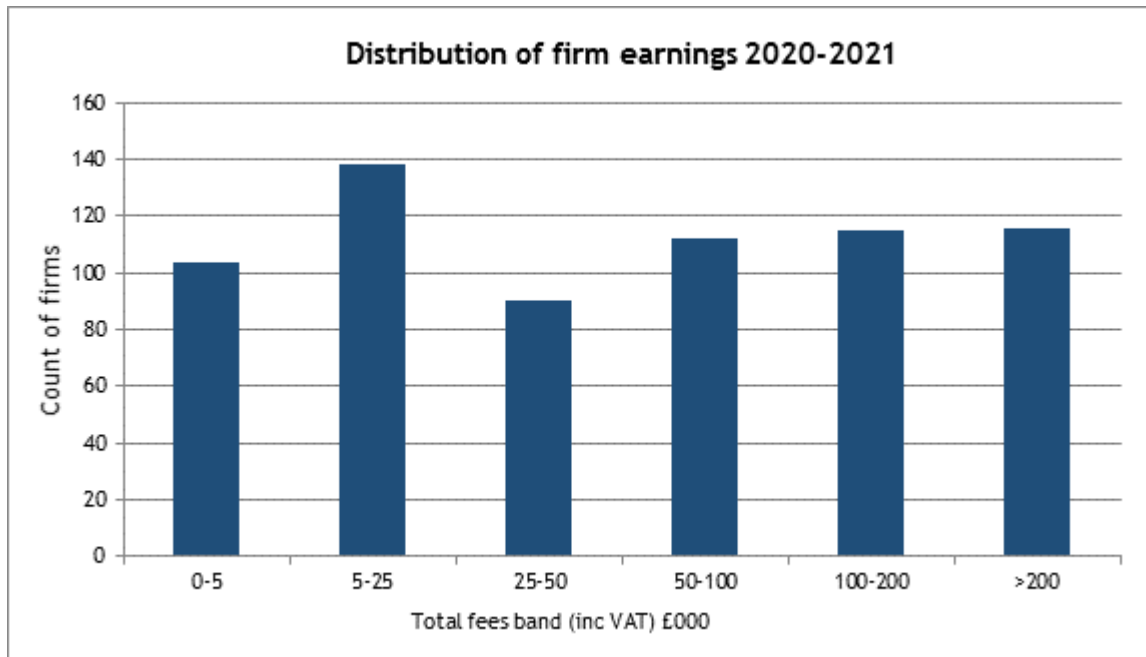
- Almost 75% of active criminal practitioners operate in firms with five or fewer criminal practitioners;
- Firms with five or fewer criminal practitioners account for 70% of all criminal legal aid expenditure
- 22% of active criminal practitioners are the only criminal practitioner in their firm
- Fewer than 10 firms have 10 or more criminal practitioners.

As shown above, a significant proportion of criminal work is concentrated in a relatively small minority of firms:

- In the last year, over 60% of solemn and summary applications were submitted by fewer than 25% of active firms.
- By contrast, 20% of firms submitted 10 or fewer summary applications – a combined total of just 0.7% of all applications.
- SLAB data suggests that this concentration is becoming more pronounced, with the more active firms taking on an increasing proportion of cases.

SLAB data does not tell us whether solicitors actively providing legal aid also undertake privately funded work, how many other solicitors there are in those firms undertaking other work, or what proportion of a firm's income is derived from legal aid. It cannot be assumed, therefore, that firms with low legal aid income have low income overall, or are dependent on legal aid to be profitable.

As illustrated in the chart below, almost half (49%) of all firms receiving legal aid payments in 2020-21 earned less than £50k from legal aid. While it is possible that some of these firms may be very small businesses with low overall turnover, it is likely that most will also generate at least some – and possibly far more significant – income from non-legally aided work. Those 332 firms between them accounted for just 7% of total legal aid annual expenditure. At the other end of the scale, 116 firms (17%) earned over £200k from legal aid, collectively accounting for 61% of all expenditure.



Care has to be taken with such figures. Earning large amounts does not necessarily equate to profitability. Equally, low levels of legal aid income may in fact still be profitable for very small firms with low running costs, and will often in any event be augmented by income from private client work.

Despite the representations made by the profession over the last 18 months, there remains a lack of factual data to show that recent levels of funding (enhanced as they have been over the last three years) have been or are currently insufficient to deliver remuneration sufficient to maintain appropriate supply.

SLAB undertook analysis⁸ at around the time of the 2008-2010 fee increases into the profitability of criminal work, using data on costs provided by a range of firms to inform modelling of profits achieved or achievable by different firm structures with varying business levels. That work – undertaken before the full benefits of summary justice reform or solemn fee reform – concluded that adequate profits could be achieved by well-run firms with a reasonable caseload.

More recently, the Law Society of Scotland commissioned research in 2017 (the Otterburn report⁹) “in order to gather information about the financial health of legal aid firms”. It is clear from the research that a range of firms are involved in legal aid

⁸ [SLAB+Note+1+2010+Economic+Analysis+of+Criminal+Legal+Aid.pdf \(www.gov.scot\)](https://www.gov.scot/Resource/0045/0045.pdf)

⁹ <https://www.lawscot.org.uk/media/10079/legal-aid-financial-health-report-february-2017.pdf>

provision, often alongside other work, with the share of total fee income derived from legal aid for the firms in Otterburn's sample ranging from 5% to 100%.

Martyn Evans assessed the findings¹⁰ of this research in the report of his independent review of legal aid in 2018, concluding that the report showed median annual per partner profits of around £80,000; that legal aid specialists on average were slightly more profitable than the other firms in the sample; and that those who did most legal aid were most profitable (Otterburn's analysis suggested median per partner profits of £102,000 in the larger legal aid specialist firms).

It was partly this disjunction between what the Society and other solicitor organisations had submitted to the review and Otterburn's actual findings that led to Martyn Evans' conclusion that the case had not been made for an overall increase in legal aid fees. Rather, he suggested that comprehensive data was needed to enable an analysis of the costs, income and profitability of firms undertaking legal aid work. The payment panel reached the same conclusion. In January 2022 the then President of the Society rejected an invitation to work collaboratively with us on the gathering of such evidence and instead called for an immediate further substantial uplift in fees.

In the absence of verifiable data on the income, costs and profitability of legal aid firms, it is impossible to determine whether levels of remuneration (in the form either of partner profits, or the salaries paid by partners to their employed solicitors) are sufficient to retain the number of suppliers needed to deliver legal aid services to those who need them. Without such data, the profession has argued that changes in supplier numbers are themselves evidence of inadequate fee levels.

As outlined above, there is little evidence that the reduction in the number of active criminal firms has been problematic to date from an access point of view, given that it has been largely concentrated amongst those who undertake a small minority of criminal legal aid work. But nor is it at all clear that the reductions that have been seen are driven by fee levels: the data suggests that it is in fact a necessary market response to a significant and sustained reduction in demand, which has led to a reduction in the income available to support the range of providers who might otherwise have sought to continue providing criminal legal assistance.

The reduction in supplier numbers did not begin until some time after case numbers began to fall. In part, this may have been because a combination of the increase in solemn fees in 2010 and an increase in the share of advocacy work being undertaken by solicitor advocates led to an increase in average solicitor payments per case. This may have cushioned the sector from the dual impact of the initial drop in case numbers and the savings measures introduced in early 2011. However, from a peak in 2013-14, total and per case payments to solicitors (including solicitor advocates) fell from £30.2m to £19.8m in 2017-18, a fall of 34% in just four years. This drop was the combined result of a 13% fall in case numbers and a 25% reduction in solicitor payments per case. The latter fall happened despite no change in legal aid fee levels i.e. was a result of less work being billed and paid.

¹⁰ The findings only. the data supporting those findings was not made available to Martyn Evans for the purposes of the independent strategic review.

Combined with the ongoing decline in summary volumes (where average costs vary less due to the fixed fee), the changes in solemn volumes and case costs resulted in a very significant reduction in fee payments in the years before the pandemic. Criminal payments to solicitors peaked at just under £74m in 2008/09 and by 2013/14 had already fallen by almost £10m. Over the following four years, they fell by a further £15m such that by the onset of the pandemic, total payments had been at just under £50m per year for three consecutive years.

Had there been no change in active practitioner numbers, this decline in total fee income would have led to an even more significant reduction in payments per practitioner: the much reduced total fee income flowing from fewer cases combined with reduced income per case would not have been able to support the same number of practitioners. Focusing on those deriving more than £1000 per year from criminal legal assistance, per practitioner fee income fell from over £64k in 2013-14 to £52.5k in 2018-19. This is a significant reduction – 14% - but had there been no change in practitioner numbers, the reduction would have been 25%. Another way of looking at this is that active practitioner numbers were, prior to the pandemic, *higher* than in 2013-14 relative to the amount of available work measured in terms of total fee income.

As things stand, the reduction in provider numbers has not kept pace with the fall in business levels, meaning that firms and solicitors – including those at the top end, where the reduction in firm numbers has been smaller - are handling fewer cases on average and generating lower total fees as a consequence.

As the private sector has to be commercially viable, it is inevitable that firms facing a reduction in demand, business levels and associated income will have sought either to diversify or leave the legal aid market in search of other opportunities. It is also likely that some firms will have sought to maintain commercial viability by reducing their costs, including - for those firms with employed solicitors - solicitor salary costs. Static or reducing solicitor salaries may have encouraged individual solicitors to seek opportunities elsewhere. This is a natural, predictable and indeed necessary response of a market sector seeing a significant drop in overall demand and available income: the alternative is that the sector simply carry spare capacity and absorb costs that cannot be met by reduced fee income.

This analysis suggests that the driver for lower practitioner numbers has been the reduction in demand, in the form of fewer cases and, on average, less work being billed per case. In general terms, it follows that fewer practitioners would be needed to cover the business that remained available.

While cited as a sign of a profession in crisis, every solicitor that took up a post elsewhere reduced the costs that might otherwise have been carried by a sector with insufficient work to generate the income needed to continue to meet those costs. While at a sector-wide level this analysis suggests that the reduction in numbers was a rational, necessary and indeed inevitable response to the reduction in demand, the impacts of both the reduction in demand or the loss of fee earners will not have been evenly distributed.

Section 4: The challenges in recruitment and retention of solicitors reported by the legal profession.

It has been suggested that young legal aid solicitors are not joining, or are leaving, the profession because of a crisis in legal aid.

While there has been a verifiable decline in the number of legal aid practitioners as noted above it does however track the overall decline in available legal aid work. But such figures can hide genuine issues in the diversity and age of the profession.

Evidence considered by the Legal Aid Payment Review Panel on recruitment and retention in the legal profession showed that the issue was not unique to legal aid provision, or to legal services more generally. Studies show that new graduates appear less likely to join an organisation and remain there for their whole career but instead build a “portfolio career”¹¹. They also want to progress very quickly in terms of job role and salary.

The Scottish Young Lawyers Association also conducted a survey in 2018 on why young lawyers are considering leaving the profession and appears to support the premise that this is a legal sector issue as opposed to a legal aid issue. One of the predominant issues for new lawyers is work/life balance. The survey suggests that the average working week for new lawyers is 36.84 hours, but within this average hours are highly variable.

To assist in addressing the concerns of the LSS with recruitment and retention in private legal aid firms, the Scottish Government provided £1m for the recruitment of 40 trainees to legal aid providers over 2021-22 and 2022-23. Those firms who were successful in this recruitment therefore have a member of staff who can fee earn after 3 months.

Representatives from the LSS and SSBA have stated that significant numbers of lawyers are leaving legal aid work to join COPFS or Public Defence Solicitors Office (PDSO) due to the salaries on offer. Figures publicly available from COPFS demonstrate that this is not accurate and the Crown Agent will write to the Committee under separate cover with details of recent recruitment and salaries.

The profession’s case for an increase in fees has been based on comparisons with the salaries payable for work they see as being equivalent, with particular reference to COPFS. The starting salary for a Procurator Fiscal Depute (PFD) is routinely taken as a point of comparison chosen by the profession to argue that the legal profession cannot afford to pay the same salaries as the public sector. Such comparisons are by no means straightforward: not only is it difficult to compare one job with another without undertaking a detailed job evaluation, it is also difficult to conduct a comparison when information only exists as to one side of the equation.

In the absence of comprehensive information, only general observations are possible: many criminal firms derive a very significant proportion of their income from legal aid – often above 90% - but many others have a mix of legal aid and privately funded business. Salaries are determined by individual employers and will vary from firm to

¹¹ <https://www.institutelm.com/resourceLibrary/great-expectations-managing-generation-y.html>

firm. New entrants represent a relatively small proportion of all defence agents and they will have varying degrees of experience. Most firms do not have salaried solicitors (50% are sole practitioners and over 70% have two or less practitioners, and will be entirely comprised of equity partners). A focus on salaries for employed solicitors, and especially newly qualified solicitors, therefore represents a minority of the criminal bar.

In summary, this section shows

- In a demand led system expenditure will increase or decrease determined by available case work. Legal aid expenditure is not a direct comparison with fees; it is an indication of the levels of demand for legal aid and business conducted;
- Decades of reducing crime and court proceedings naturally impacts on the amount of available work and therefore on provider numbers;
- The continued operation of suppliers in the margins of legal aid reduces the ability of those committed to legal aid provision to fee earn;
- Legal aid payments are not an indicator of firm or individual income. Income can be augmented by private client work for example. Equally, they do not shed light on the operating costs;
- Comparisons between public sector salaries and those paid by legal aid providers cannot be drawn without data from the profession. The immediate past President of LSS has declined to assist in this data collection.

Reaching an agreed settlement

We are working with the profession to agree an affordable settlement which would meet the needs of the profession enable and support further constructive engagement with both the courts recovery programme and the payment panel review. That work is ongoing and the Committee will be kept abreast of progress.

Letter from the Scottish Government outlining its plans following the consultation on the not proven verdict and other matters (12 July)

As you are aware, the Scottish Government committed in its recent Programme for Government to launch a public consultation on the three verdict system and whether the not proven verdict should be abolished, and to also consider reform of the corroboration rule.

The not proven verdict and related reforms consultation launched on 13 December 2021 and closed on 11 March 2022. The independent analysis of the consultation responses was contracted to Why Research following a tendering process.

I am pleased to inform you that the consultation analysis report will be published today and will be available at <https://www.gov.scot/publications/not-proven-verdict-related-reforms-consultation-analysis/>. The consultation received 200 responses, of which 21 were from organisations and 179 from individuals, and these will also be published today, where we have permission to do so, at <https://consult.gov.scot/justice/not-proven-verdict/>.

I am grateful to all of those individuals and organisations who have taken the time to contribute their views on these matters, particularly those who have shared their personal experience of the justice system.

We must now give careful consideration to the full range of views received on these complex issues. The findings from this consultation analysis, along with a range of other information and evidence from engagement and consideration of the issues, will inform the decision making process on any potential recommendations for reform.

Any potential reforms will be considered alongside wider work, including the outcome of the current consultation on improving victims' experiences of the justice system. That consultation includes consideration of those recommendations of the Lord Justice Clerk's review on [improving the management of sexual offence cases](#) which require legislative change to implement.

Keith Brown

Letter from the Minister for Drugs Policy on the new National Drugs Mission Oversight Group (30 June)

The First Minister launched the National Mission in January 2021 with the express aim of reducing deaths and improving lives. The Implementation Group has played a key role in the first year of the National Mission, considering vital topics such as access to mental health support, the pathways into and from residential rehabilitation and the implementation of the Medication Assisted Treatment (MAT) standards.

The first year of the National Mission was about building the foundations for change: rolling out MAT standards; taking a new approach to making more residential rehabilitation opportunities available; setting a new treatment target; increasing funding to community and grass-roots organisations; and setting the ground work for innovation such as through Safer Drug Consumption Facilities.

This year, and in the following years, the focus of the Mission has turned to delivering on those foundations. To support this, our structures and governance framework must reform.

That is why I believe the Implementation Group must refocus on providing scrutiny, challenge and expert advice to both the Scottish Government and the wider sector.

I am therefore establishing a new Oversight Group to take up this task. It will bring together leaders from a range of organisations and backgrounds, including those with lived and living experience, clinicians, international experts, the third sector and local government. The first meeting of the group will be held on 30 June 2022. As with the Implementation Group, the membership, terms of reference and minutes from the group will be published on the government website. A full list of members can be found at appendix A which has been sent with this letter.

Angela Constance

Appendix

Members of the Oversight Group

- Angela Constance, Minister for Drugs Policy, Chair
- Dave Liddell, Scottish Drugs Forum
- Justina Murray, Scottish Families Affected by Alcohol and Drugs
- Jardine Simpson, Scottish Recovery Consortium
- Emma Crawshaw, CREW
- Belinda Phipps, We Are With You
- Billy Watson, Scottish Association for Mental Health
- Sandra Holmes, lived and living experience representative
- Rachel McGrath, lived and living experience representative
- James Docherty, lived and living experience representative
- Susanna Galea-Singer, Royal College of Psychiatrists committee member
- Catriona Morton, Royal College of GPs Deputy Chair
- Laura Wilson, Royal College of Pharmacists

- Eddie Follan, COSLA
- Dr Sharon Stancliffe , New York City Health Department
- Dr Michel Kazatchkine , World Health Organization Regional Office for Europe (WHO/Europe)
- Professor Thomas Kerr PhD , Dept. of Medicine, University of British Columbia
- Tessa Parkes, University of Stirling
- Andrew McAuley, Glasgow Caledonian University
- David Strang, Drugs Death Task Force

Further letter from Angela Constance on the publication of the National Mission Plan (9 August)

Dear Convenors,

I am writing to make you aware that we are publishing the National Mission Plan today (9th August 2022). The plan sets out the focus and drivers of the National Mission to reduce drugs deaths as it enters into its second year.

The first year of the National Mission was about building the foundations for change, while this year and in the following years, the focus of the Mission has turned to delivering on those foundations.

This document sets out our approach to achieve our aim – to reduce drug deaths and improve lives - through the articulation of six outcomes.

These outcomes, alongside six cross cutting priorities have been developed in collaboration with our stakeholders including representatives with lived experience and we thank them for this and look forward to working together to deliver on these outcomes. The outcomes describe both the complexity of the challenge we face and the opportunities that a whole systems, whole-Scotland approach will afford a National Mission.

The plan also sets out the governance structure around the mission, the delivery landscape and our plans for monitoring and evaluation.

The plan is available online at <https://www.gov.scot/publications/national-drugs-mission-plan-2022-2026/> and I have attached a version for your convenience.

If you have any questions, please do not hesitate in contacting me.

Angela Constance

Letter from the Cabinet Secretary for Justice and Veterans on the funding for recovery cafés in Scottish prisons (19 July)

I refer to your letter of 1 July which asked for clarification on whether the Scottish Government supports the Committee's specific recommendation that funding is provided for a recovery café in each institution where appropriate.

I can confirm that we fully agree with the need for effective recovery cafes in Scotland's prisons, closely linked to services in communities. This link is vital in order to provide for the safest transitions between communities and justice settings.

As part of the national mission to save and improve lives impacted by drugs, we are now providing a record level of funding to the community and grass roots groups which set up and run recovery communities, hubs and cafes in prisons, and we are actively encouraging groups to become more involved in these settings, given how vital this sort of support can be.

As part of the on-going implementation of our medication assisted treatment standards, the implementation support team is working with SPS staff, third sector providers and local alcohol and drugs services to pilot a model of stronger community links to existing recovery hubs and cafes in institutions such as HMP Perth. This pilot will provide a model to strengthen the link between third sector initiatives in prison, the positive approach being taken by SPS staff there and support available in associated communities.

This work has attracted a great deal of interest from all other institutions and so we would hope this will be replicated across all of Scotland's prisons.

Keith Brown

Letter from SPS on access to fresh air

Thank you for your correspondence, received 01 July 2022, regarding follow up questions in relation to access to time in the open air and purposeful activity within Scottish Prison Service (SPS) establishments.

I can confirm that access to time in the open air is available in all establishments for all individuals in our care. The minimum period of time offered is one hour per day. The only deviation that could occur from this would be in a significant outbreak situation where it would not be operationally feasible to provide access to that standard. If this situation was to occur, Public Health colleagues would be involved in conjunction with SPS in the management process, and any authority to grant a change in access to time in the open air would be requested by the establishment for the Director's approval.

However, currently, the minimum of one hour per day is being provided at all SPS prisons. Additionally, access to purposeful activity is available within all establishments. However, the type of activity can vary between prisons depending on their business needs, resource availability and structure of the establishment.

I trust this information has been helpful

Teresa Medhurst

**Letter from SPS on the issuing of medical slips to prisoners on their liberation
(23 June)**

Thank you for your correspondence dated 23 May 2022, in relation to questions raised by Wise Group at your recent visit regarding the rules and procedures for the issuing of medical slips to prisoners on their liberation.

The responsibility and accountability for healthcare to prisoners in Scotland transferred from the Scottish Prison Service (SPS) to NHS Health Boards in November 2011. NHS Health Boards are responsible for the delivery of healthcare services to those whilst in the care of SPS which includes a responsibility for the transfer of patient information upon release; as such, SPS do not handle any clinical information relating to an individual's care.

I am sorry I am unable to answer your query on this occasion and hope you find this information useful.

Teresa Medhurst

Letter from the Crown Agent on centralisation of case marking

Thank you for your letter of 1 July 2022 to the Lord Advocate about the centralisation of case marking within Crown Office and Procurator Fiscal Service.

The Committee has asked about the extent to which the move to centralisation has assisted in dealing with the processing of cases reported by the Police and other Specialist Report Agencies. The Committee has also queried the impact of this on the use of alternatives to prosecution and the knowledge of schemes and programmes related to alternatives to prosecution.

The Committee will be aware that COPFS, like other legal organisations, has adopted a more specialised approach over many years. There are a number of specialist functions within COPFS which has allowed greater expertise to be provided and an improved service to the public. Examples of specialist units within COPFS includes the Appeals Unit; Serious and Organised Crime Unit; Health and Safety Investigation Unit; Criminal Allegations Against the Police Unit; Proceeds of Crime Unit; Wildlife and Environmental Crime Unit; International Cooperation Unit and the Scottish Fatalities Investigation Unit. COPFS has long regarded it sensible to have specialist staff working on High Court level case work, and within that further specialisation in relation to homicides and sexual offending.

The Committee will also be aware that in 2012 COPFS created a further specialisation for case marking through the creation of Initial Case Processing hubs within the then COPFS Federations (West, East and North). Since then initial case processing has been undertaken through a National Initial Case Processing Unit (NICP). The work of the unit has varied slightly over the years however it has created a dedicated resource to consider many of the reports containing allegations of criminality that are received in COPFS. The benefits which have been derived from creating such a unit include having dedicated ring-fenced staff to deal with such important work, along with the delivery of focussed and targeted training and specialist knowledge within the team.

The current complement for NICP is around 69 members of COPFS, a mix of legal, administrative and business staff. The staff are associated with three geographic Procurator Fiscal offices at Falkirk Hamilton and Paisley, however given COPFS's digital strategy, all members of staff are able to work from any PF office or at home, and accordingly members of NICP can live and work from any place in Scotland.

The current remit of NICP is to consider and take and implement legal decisions in relation to summary level cases reported either as custodies or report level (other than cases which pertain to one of the other specialist units). Cases reported as undertakings are currently processed within the COPFS sheriffdoms. Cases which are considered to be at sheriff and jury level (where the ultimate sentence is likely to be less than 5 years imprisonment) are marked within the local sheriff and jury teams. Cases which involve crime at High Court level (where the ultimate sentence is likely to be greater than 5 years imprisonment) are marked within the High Court function. Cases being marked within a National Initial case Processing Unit has produced improved skills, knowledge and expertise of staff undertaking their work and therefore a higher quality of case marking decision making. NICP legal staff receive significant training in the consideration and marking of cases. It allows them to have a greater

familiarity and knowledge of the COPFS internal Case Marking Instructions which provides legal guidance for many different types of crimes and offences reported to COPFS. As a result of the focussed training, NICEP staff have awareness of the prosecutorial options which are available and in particular direct measures (or alternatives to prosecution).

You have asked about two specific aspects, which I paraphrase:

(a) Whether there has been an evaluation over the effectiveness of centralised hubs and in particular in relation to the backlog of cases awaiting marking

(b) What processes are in place to ensure that centralised hubs take account of the availability of local schemes and programmes (it seems the question is directed at alternatives to prosecution and specifically in relation to diversion)

Evaluation over the effectiveness of centralised hubs and in particular to the backlog of cases awaiting marking

COPFS carefully monitors performance of case marking through a series of detailed metrics which provide managers with information as to the volume and age profile of the workload. Within NICEP the Senior Management Team constantly review the effectiveness of the Unit. Having a dedicated national specialist unit allows COPFS to have better management of case marking which was not possible when the marking workload was dispersed amongst all local offices in which prosecutors had competing priorities such as court appearances.

Processes to ensure that availability of local schemes and programmes are taken into account

Centralised marking brings a number of advantages for improved decision making including decision marking in relation to direct measures.

In the years prior to the creation of NICEP, diversion was used as a case marking decision in less than 1% of cases. In 2000-01 it was used in 0.7% of cases; in 2004-5 in 0.9% of cases; in 2008-9 in 0.8% of cases. In years following the creation of NICEP, the use of diversion has increased considerably. In 2016-17 it was used in 1.9% of cases; in 2021-2 it was used in 2.7% of cases and last year it was used in 3.2% of cases. There are a number of reasons why NICEP has been successful in diverting more individuals from a court disposal. It is partly due to the creation of the specialist team which has greater awareness of the diversion schemes available, a greater ability to direct our attention to particular types of offenders such as younger persons and the improved specialist training and case marking experience. I believe that such benefits are replicated across all cases considered by the specialist team.

I hope that this information is of assistance to the Committee.

David Harvie

Letter from COSLA on the funding for secure care (15 July)

Thank you for your email of 28 June 2022 seeking the views of COSLA on the current and future models of funding for secure care.

Local authorities in Scotland have significantly decreased their use of secure care over a number of years, through increased early support, community-based alternatives, and preventative approaches meaning there is less demand for secure care in Scotland. At the end of January 2022 there were 38 young people in secure care on care and protection grounds, and 1 young person in secure care who was sentenced. There are 78 secure care beds in Scotland, with 72 of these provided by four independent providers (six provided by City of Edinburgh Council). Beds within the four independent providers are purchased via the Scotland Excel framework for Scottish local authorities and Scottish Government. Cross border placements (placements from outside of Scotland into these centres) are common, with 32 of these placements at the end of January 2022. These are not purchased via the Scotland Excel Framework. For clarity, where a placement is made on care and protection grounds, local authorities are responsible for funding. Where a placement is made through the criminal justice system, Scottish Government are responsible for funding.

The Promise has narrated a vision for Scotland's children and young people and is our guiding light when considering the future models of delivery and funding for secure care. As such, COSLA has been working with Scottish Government and Scotland Excel on a number of areas around secure care; from alternative funding models to improving availability and standards of secure transport.

In February 2022 COSLA's Children and Young People Board agreed to support an alternative short-term funding option for secure care developed between COSLA, the Scottish Government, Scotland Excel and Social Work Scotland. This is an interim approach to funding secure care provision in Scotland that will accelerate work towards a longer-term solution which focuses on the care, support, and safety that children and young people need.

In the short term the Scottish Government has agreed to pay for the last bed in each of the four contracted secure centres, as it becomes available.

The short-term objectives of this funding are:

- To reduce the number of cross-border placements, as required by The Promise;
- to ensure capacity for children living in Scotland, when required; and
- to support secure services financially to enable all partners to consider longer term changes required

This short-term model will be a trial of up to six months, likely beginning in September 2022. During this period partners, including the four secure centres, will work collaboratively to consider the longer-term requirements and operating models for secure care in Scotland, based around 'Getting it Right for Every Child' and in line with the expectations set out in The Promise.

COSLA is committed to Keeping The Promise and as I hope I've conveyed in this letter we are committed to working collaboratively with partners to design a future for secure care that meets the needs of our children and young people

Cllr Tony Buchanan
COSLA Spokesperson for Children and Young People

Letter from the Scottish Fire and Rescue Service on the use of Naloxone (2 August)

I am writing in response to your request for information on the Scottish Fire and Rescue Service's (SFRS) policy and practice with regards to firefighters' carrying and administering the Naloxone nasal spray Nyxoid.

The Service has formed a Thematic Working Group for Naloxone that will coordinate the Service's policy and practice with regards to firefighters' carrying and administering Naloxone. The first stage will raise the awareness of staff regarding drug deaths in Scotland, the role Naloxone can play in reducing these deaths and the development of processes to support the voluntary carrying and administering of Naloxone.

As part of this work the Scottish Drugs Forum's 'Overdose Awareness and Training Package' has been included in the SFRS July 2022 Training for Operational Competence Casualty Care module and also in our Regulation and Compliance module. To date 1226 members of SFRS operational and support staff have completed this training package.

To help support this work at a local level the Service has established 3 Naloxone champions, one in each of our 3 Service Delivery Areas. These champions have established contact with the Scottish National Naloxone leads to coordinate the supply of Naloxone to the SFRS.

Through collaboration with the Scottish Ambulance Service and Police Scotland, a Tri Emergency Service common referral pathway has been established that will enable staff who often encounter people and their families affected by drugs and alcohol to provide information on available support services in the local area this includes Scottish Families Affected by Alcohol and Drugs referral cards.

SFRS proposes that the Government funding will be used to establish interim post/s of Drug Harm Reduction Officers within the SFRS to support the Naloxone rollout and establish robust referral pathways to support addictions with a national remit on Harm Reduction. Progress is being made in this regard.

The second stage and further expansion, planned for later this year will identify volunteers from operational and support staff who will carry and administer Naloxone.

Alasdair Perry
Deputy Assistant Chief Officer
Head of Prevention and Protection
Scottish Fire and Rescue Service

Letter from Martyn Evans, Chair of the SPA about changes to the police pension scheme (5 August)

I write in response to your correspondence of 28 June 2022 regarding the changes to police pension arrangements and the impact of officer retirements.

You ask for information on anything the Authority is doing to plan for the loss of experienced and skilled officers, and detail of the Authority's oversight and scrutiny of the impact of this. The Authority expects Police Scotland in the first instance, to highlight, analyse and set out how it proposes to address the impact of high numbers of skilled officers leaving the service. It is the Authority's role to provide oversight of this work and test it with a view to providing assurance on appropriateness, relevance and potential impact.

The Authority's People Committee is leading our oversight of this particular issue. A detailed report was presented by Police Scotland to the Committee on 1 June 2022. Members discussed the challenges, forecast retirements and Police Scotland's actions to manage recruitment and mitigate any resulting impact. Committee members were satisfied that Police Scotland has sought to understand the issue and is actively working to address it. In addition, the committee has requested further analysis of data and trends from Exit Interviews to give members a deeper understanding of the reasons being recorded for why officers and staff are leaving the services. This information will be presented to a future meeting of the committee.

Police Scotland will continue to report quarterly updates to the committee and members will keep the issue, impact and progress under close scrutiny. Linked to this, the People Committee receives succession planning updates which highlight any emerging gaps or risks across the workforce.

With regards to the impact of retirements on service delivery, we note DCO Page's comments to the Criminal Justice Committee. These comments are consistent with those reported to the Authority to date - that the efforts and mitigations are ensuring that the public continue to receive a responsive police service. Our People Committee is monitoring this issue, while the Authority's Policing Performance Committee leads our oversight and scrutiny of service delivery, tracking Police Scotland's performance against the agreed framework.

The Authority would expect any adverse impact on the service delivered to the public to be highlighted and reported through the performance reporting framework. There were no issues reported to the Policing Performance Committee at the end of quarter 1 relating to the impact of service delivery due to officer retirements. We will continue to closely monitor that picture.

You also ask whether the Authority is undertaking work to assess whether stress or other psychological illnesses are contributing to officers opting to leave the service. The People Committee considers workforce data on a quarterly basis which includes reporting on absences related to psychological disorders. The committee has a strong focus on seeking the evidence to assure ourselves that Police Scotland demonstrate how it is using data to inform and prioritise action. At the June meeting, Police Scotland confirmed it is carrying out detailed analysis on stress and psychological illness within

the workforce. Members welcomed this activity and will consider the findings at a future People Committee, alongside information on what support (both proactive and reactive) is provided by Police Scotland to support resilience and psychological wellbeing of staff. This information, coupled with the additional analysis requested by the committee of data and trends from Exit Interviews will provide a fuller picture of the impact of stress and other psychological illnesses on or workforce.

Another area of the committee's interest in relation to wellbeing has been Police Scotland's Organisational Implementation Plan. The implementation plan seeks to address the range of issues identified through our 2021 workforce survey and improve the wellbeing of the policing workforce as outlined in the report. The Authority is supportive of these efforts and activities in response to the survey findings. We will continue to closely monitor their progress and impact.

Finally, the voice and opinions of our workforce representatives are valued and heard. I have personally committed to meeting staff associations and trade union representatives regularly throughout the year. In addition representatives are invited to attend and make contributions at our People Committee meetings.

Representatives also attend a group established by Police Scotland to consider and respond to risks arising from changes to police pension arrangements. This means they have been involved in discussions about all these issues to date and will continue to be.

I trust this information is helpful. I have asked the Authority's Chief Executive to ensure the committee is aware of any further updates or considerations by the Authority on these matters.

Martyn Evans
Chair

Letter from David Page, Deputy Chief Officer, Police Scotland on police pensions and police numbers

I write in reference to your letter dated 28 June 2022, in which you raised various questions in relation to the assessment on the impact of the recent Police Pension changes.

As outlined in my letter of 18 May, we have seen a sharp rise in the number of officers eligible to leave the Service. We estimated 1,377 across all ranks were affected by the recent pension changes and could leave earlier than would otherwise have been the case.

Our current (as at 1 Aug 22) data indicates 1,137 officers will leave this calendar year, with 718 of those being officers having between 25-29 years' service.

Exit interviews were conducted between October 2021 and March this year with 177 officers leaving the Service. Officers can provide any number of considerations which influence their decision to leave the Service and reasons can overlap. However, the top 3 causal factors for leaving identified through these interviews are as follows:

Retirement	87%
Lack of Resources	10.2%
Career Change	7.3%

As can be seen, the vast majority of officers state retirement as their primary reason for leaving the Service, with lack of resources given as the second main reason.

There are clearly other reasons given. We continue to explore the underlying causal factors to take management action where appropriate. I would also note that we want to increase the number of officers that reply to such exit surveys to improve the quality of the data.

The Chief Constable consistently underlines that policing is relentless and places significant demand on the physical, emotional and mental wellbeing of officers and staff and takes every opportunity to thank them for their dedication to helping their fellow citizens.

Police Scotland is committed to listening to our workforce and taking action to improve their experiences. In October a survey of almost 7,400 officers and staff was conducted by Durham University Business School. The business school has worked with over 30 police services and their experience and expertise enables credible, meaningful and comparable insights.

Their survey found high levels of commitment to public service and high levels of job satisfaction at Police Scotland. However we know fatigue among officers and staff was recorded at a moderate level and the Chief Constable has underlined his determination to drive improvements. We know, for example, that the support from the provision of nearly 11,000 mobile devices, provides significant benefits for officer and staff safety, wellbeing, efficiency and service.

We have consistently stressed that transformation of policing in Scotland is far from complete and that we have been required to deal with years of under investment in key areas such as estate, fleet, technical equipment such as mobile devices and Body Worn Video (BWV) and continue to fall behind other Services in our digital, data and ICT infrastructure and capability. All of these are the resources and equipment officers need to do their jobs more effectively, efficiently and safely.

The implications of pension changes increasing retirements and the effect of delays in recruitment because of coronavirus and the policing of COP26 mean we have fewer officers than would otherwise be the case. As I previously stated we planned to increase probationer intakes from 200 to 300 per quarter. This we have done with each of the last two intakes into the Scottish Police College being 300, the most recent cohort welcomed into the Service by the Chief Constable at the end of July.

You also asked for an update regarding current impact on service delivery. The Chief Constable has prioritised support into our Contact, Command and Control (C3) Division; into our response capability; and into public protection, to ensure areas which encounter the greatest demand and carry the greatest risk are fully resourced.

When vacancies arise, we are consciously and deliberately considering which should be filled, and examining where officers working in support roles might be re-deployed wherever possible.

These measures are similar to those taken throughout the pandemic and the experience of managing acute absence means we are better able to understand demand and flex resource across our national Service.

With our focus on these three areas – C3, response policing and public protection – some work in other business areas may be stopped or scaled back as we prioritise our work based on our professional assessment of risk.

These are not decisions that will be taken lightly and our focus will always be on the most vulnerable in society.

Policing is so often the service of first and last resort and we continue to see an increase in community needs, such as mental health crises and social care, where a police response is provided in the absence of other services. We will be working closely with partner agencies over the coming weeks to highlight these issues and ensure people are given the help they require and deserve.

Additionally, you asked if an assessment has been undertaken regarding the high number of potential leavers over the next 12 months and what impact that may have on our service delivery. The number of leavers due to the pension changes is now starting to settle down after the initial spike of those who were able to take advantage of the scheme changes. We do expect this will continue to normalise over the coming months and we will monitor this position carefully.

The Operational Priorities, Capacity & Resilience (OPCR) group chaired by Deputy Chief Constables Will Kerr and Malcolm Graham is continually assessing the issues and impact to ensure the prioritisation of available policing resource against operational priorities.

As demonstrated during the pandemic and throughout COP26, Police Scotland is able to take quick action in the short term to maintain effective service for our citizens while under considerable strain.

However, we are continuing to see the impact of fewer officers across a range of operational areas, including our responsiveness to calls from the public. Sustained investment is required to ensure Police Scotland has the capacity and capability to meet increasing demand.

On 31 May 2022, the Scottish Government (SG) published its five-year Resource Spending Review (RSR), which proposed a flat-cash settlement for policing over the next four years.

During a meeting of the Scottish Police Authority (SPA) Board in June, the Chief Constable outlined that although the RSR is not a budget, the funding profile set out would have a serious impact on Police Scotland and our likely future workforce numbers should it be carried through into budget allocations.

This would affect our recruitment planning and operational service delivery, impacting both this financial year and over the next four financial years. The Chief Constable and Force Executive are working with the SPA and SG officials to fully understand these implications and options available, recognising a funding allocation for policing for 2023-24 is yet to be finalised.

David Page
Deputy Chief Officer

Letter from Police Scotland on tackling online child abuse, grooming and exploitation

I write in response to your recent correspondence, received via email on 20 June 2022, seeking follow-up information in relation to roundtable evidence sessions on grooming and exploitation in particular to the below remarks:

During the evidence session you indicated that Police Scotland are starting a piece of work around public protection policing, and looking at the demands on officers, their workload, and the psychological support provided. You explained that the purpose is to ensure that Police Scotland have the right resource to meet demand and that the public protection area of policing is future proofed.

Could you please provide more details on this work? For example, details of the timescale, how officers are to contribute to the review, and whether it includes consideration of the hours that public protection officers are working and whether they are being provided with adequate recovery time.

The Public Protection Development Programme (PPDP) has been established to undertake a comprehensive review of Public Protection structures, systems, processes and demand in order to develop an improved, innovative and sustainable Public Protection model for National and Local Policing.

In 2013, at the formation of Police Scotland, Public Protection structures were identified and established across Local Policing Divisions (LPDs), supported by specialist national functions within Specialist Crime Division (SCD). These structures have evolved and grown organically over 8 years, however, remain fundamentally similar to those of 2013. Critically to date, there has been no national review of these structures and their ability to meet increasing demand, changing complexities and public expectation.

The demand and crime profile across the public protection spectrum has changed – with increased prevalence of criminality in a virtual, online environment. Online offending has no geographical boundaries and is, by its nature, anonymous, private and creates additional challenges beyond the traditional policing response. Confidence in reporting and the impact of external reporting structures, such as the Scottish Child Abuse Inquiry (SCAI), have increased demand in existing areas, including non-recent reports of physical and sexual abuse.

It has been agreed that a wholesale, comprehensive review of Public Protection structures across Police Scotland is required. This will identify and deliver solutions to achieve an optimum and sustainable future operating model, which addresses demand, mitigates risk, threat and harm and meets public expectation, whilst supporting our officers and staff. It is acknowledged that to simply increase resource within current structures, with associated financial costs, may not necessarily address the emerging issues.

A small dedicated team has been in place since February 2022 and are undertaking a structured and phased review to understand the current response to Public Protection in Police Scotland. The initial focus will be on establishing the current Public Protection structures, resources and remits throughout all LPDs and SCD as well as

capturing a detailed demand profile, including hidden and failure demand. A key part of this will involve gathering views from those officers and staff (at all levels) in public protection roles, or roles where it is likely they will encounter public protection incidents, including Contact Command and Control (C3) Division and Criminal Justice Service Division (CJSD). This will be complemented with views gathered through external engagement with the public and our partners to ensure a comprehensive insight into our current response is obtained.

The information gathered during this phase will provide a clear understanding of the 'As is' response to Public Protection within Police Scotland and will identify key themes and risks, informing the development of an innovative and sustainable 'To be' model. There are no timescales for the overall delivery at this stage as the scale of change required is not yet known. The review phase outlined above is anticipated to conclude by December 2022, subject to any as yet unidentified challenges.

In respect of the below remark;

In his written evidence to the Committee, the Scottish Biometrics Commissioner Dr Brian Plastow, raised the absence of accreditation of the techniques deployed by Police Scotland in relation to its digital forensics' laboratory work. The Biometrics Commissioner indicated that HMICS and the SPA have previously recommended that Police Scotland should pursue accreditation of its digital forensics' laboratory work.

In 2020, the SPA Digital Forensics Working Group recommended that Police Scotland should adopt the ISO 17025 quality standard by 2022. The Biometrics Commissioner stated that Police Scotland agreed to pursue this in May 2021, but it is likely to be 2024 before compliance is achieved. Could you please provide an explanation for the delay in implementing this recommendation?

In May 2021, Police Scotland formally approved the commencement of a 3 year Project with the objective being to obtain ISO 17025 accreditation for mobile devices across all of the five Digital Forensic Hubs in Scotland.

This was as a result of both a previous recommendation by HMICS and also an SPA recommendation arising from a Digital Forensics Working Group.

The Project itself will be progressed under the umbrella of the Policing in a Digital World Programme (PDWP). The project will be delivered through a staged process with the North hub in Aberdeen being accredited initially and thereafter an iterative approach being taken towards the other 4 hubs.

Since the commencement of the Project a dedicated 'Quality Team' has been identified and recruited, this is key in delivering ISO accreditation with this being highlighted by a number of Law Enforcement Agencies (LEAs) across the UK. The organisational learning which LEAs, and crucially our own SPA Forensics, have shared during the project to date has not only assisted in the development of the Project timeline it has also established critical areas across Estate, People, Technology and Process which Police Scotland require to be aligned to in order to achieve compliance across the protocols which ISO dictates.

In addition to the recruitment of the 'Quality Team' a 'Gap analysis', which is the fundamental initial stage of accreditation, has been compiled resulting in a number of actions having already been completed primarily within the Aberdeen hub.

It would be the intention of Police Scotland that upon successfully accrediting all hubs for mobile devices the 'scope of accreditation' would thereafter increase to incorporate other devices which are examined within digital forensics, this approach mirroring that of other LEAs within the UK and which these LEAs and SPA Forensics have highlighted as a prudent approach to adopt.

On an on-going basis, Police Scotland continue to actively engage with SPA Forensics to embed any learning and ensure that our approach is in line with wider developments in forensics.

Although there is no formal requirement for adherence to the Forensic Science Regulator (FSR) in Scotland, it is the intention of the Programme to ensure that the Project complies with both the requirements stipulated for ISO 17025 accreditation and those of the FSR.

Obtaining ISO 17025 accreditation is the most significant piece of transformational activity for Digital Forensics since the formation of Police Scotland. The timeline for delivery of the Project has been established through the bench marking exercises detailed within this response and also from information provided by the United Kingdom Accreditation Service (UKAS), the accrediting service for ISO 17025.

The journey towards achieving ISO 17025 will impact on every area of Digital Forensics however will ultimately provide Police Scotland with an internationally recognised accreditation for the Digital Forensics evidence which is pivotal in supporting our Criminal Justice process

Bex Smith
Assistant Chief Constable
Major Crime, Public Protection and Local Crime