

Criminal Justice Committee

**26th Meeting, 2023 (Session 6), Wednesday 25
October 2023**

Forensic pathology services

Note by the clerk

Background

1. In her [Annual Report for 2022-23](#), Laura Paton, Inspector of Prosecution at COPFS, raised several concerns over the current model for the provision of forensic pathology services in Scotland (see **Annex**).
2. In her report, Ms Paton notes that:

“While COPFS has a duty to investigate deaths, there is no duty on any other agency to provide forensic pathology services (although there are duties on local authorities and health boards to provide mortuary services). Instead, COPFS secures pathology services under various contracts from a range of providers across Scotland, including universities and the NHS.”
3. She describes efforts to reform the system as ad hoc rather than transformational and notes COPFS’s preference to move towards a “national forensic pathology service”, considering that this would “provide consistency in service delivery across Scotland and would help it manage the significant financial and governance demands arising from the current array of contracts”.
4. She concludes that “the case for reforming arrangements for pathology services was evident” describing forensic pathology as a critical public service, and that “serious consideration should be given to the optimal delivery model” requiring the input of not only COPFS, but others such as pathologists themselves, the NHS and the Scottish Government.

Action/recommendation

5. **Members are asked to note the information in the Annual Report and consider whether to ask the COPFS, NHS and the Scottish Government for their views on the points raised by the Inspector of Prosecution, and whether there are any further plans to review the current model for providing forensic pathology services in Scotland.**

Clerks to the Committee
October 2023

ANNEX

Extract from the Annual Report 2022-23

<https://www.prosecutioninspectorate.scot/publications/annual-report-2022-23/>

During the course of its investigations of sudden, suspicious and unexplained deaths, COPFS will sometimes require to instruct a post-mortem examination. Forensic pathology and mortuary services represent a significant non-staffing cost to COPFS – around 7% of total spend. While COPFS has a duty to investigate deaths, there is no duty on any other agency to provide forensic pathology services (although there are duties on local authorities and health boards to provide mortuary services). Instead, COPFS secures pathology services under various contracts from a range of providers across Scotland, including universities and the NHS. In light of the significant costs associated with these services, COPFS initiated a contractual audit in 2017. This highlighted a range of concerns about value for money, affordability, sustainability and contractual terms.

Since then, COPFS has been seeking improvements in contractual terms with the various providers. While improvements have been achieved, these have been incremental and ad hoc, rather than transformational. In the course of its work, COPFS has identified that its preferred model would be a national forensic pathology service. It considers this would provide consistency in service delivery across Scotland and would help it manage the significant financial and governance demands arising from the current array of contracts.

However, there has been no wider impetus for a national service. In 2021, therefore, COPFS sought to procure three new regional contracts for pathology services. This procurement exercise was not successful (existing contracts were extended meantime). As a result, COPFS commissioned a Gateway Review of its forensic pathology and mortuary services programme of work which concluded that successful delivery appeared unachievable.

In light of the challenges encountered by COPFS in making further progress in this area, in late 2022, the Law Officers asked whether I might consider an inspection of COPFS's work on forensic pathology services. I committed to exploring the possibility. This involved reviewing a range of documentation and discussing the issues with key stakeholders, with a particular focus on determining what added value an independent inspection would bring.

It was clear to me that COPFS had carried out extensive work over several years in an effort to address its issues with pathology services. While it has made progress, it was also clear that it has not been able to achieve all that it would have liked, not least because securing new arrangements for forensic pathology services is not entirely within its control. This is of concern as, despite recent improvements, issues relating to value for money, affordability and sustainability persist. Recruitment and retention of pathologists, for example, is a particular challenge in some areas and poses risks to the service provided to COPFS.

From the information shared with me, the case for reforming arrangements for pathology services was evident. Forensic pathology is a critical public service, and serious consideration should be given to the optimal delivery model. However, this will require the input of not only COPFS, but others such as pathologists themselves, the NHS and the Scottish Government. Rather than reform being driven by COPFS, there is a need for a codesigned approach to securing a long-term vision for pathology services and to developing a strategic business case. COPFS should play a key role in this, but should not take the lead. Given the cross-sector nature of the work, that role would more appropriately fall to the Scottish Government.

Given my statutory remit is restricted to the operation of COPFS, I was concerned that an inspection by IPS may perpetuate the COPFS-centred nature of the work already carried out, thereby limiting its value. I was also concerned that we would gather no substantial further evidence in light of the considerable work already done, and that we would expend time and resource only to reach conclusions broadly similar to those of the Gateway Review. While the needs of COPFS so that it can fulfil its duty to investigate deaths is a key consideration in the design of pathology arrangements, a broader assessment of what is needed from pathology services is required, not least one that takes into account the needs and views of bereaved families.

I therefore concluded that an inspection by IPS was not appropriate at this time, but that this assessment could be revisited should COPFS continue to encounter difficulties in securing pathology services that meet its needs.

I highlight these issues here to draw further attention to the need for reform in this critical public service, so that value for money can be achieved while also ensuring that this service meets the needs of the justice system, bereaved families and the wider public.