

# Criminal Justice Committee

## 9th Meeting, 2021 (Session 6), Wednesday 3 November 2021

### Pre-budget scrutiny

### Written submissions from witnesses

1. The Criminal Justice Committee is holding an evidence session today as part of its pre-budget scrutiny of the Scottish Government's forthcoming Budget for 2022/23.
2. Written submissions have been provided by the following organisations who will be attending the meeting—
  - Crown Office and Procurator Fiscal Office (COPFS)And then from—
  - Scottish Prison Service (SPS)
3. These submissions are attached.
4. The Committee's [call for views](#) and the responses to date from other organisations and individuals are available [online](#).

**Clerks to the Committee**  
**October 2021**

### COPFS

For several years, COPFS' funding was such that it became increasingly challenging for it to keep pace with the reasonable expectations of both the public and its staff.

The growth in both the volume and complexity of casework, in particular in respect of serious and sexual crime and in deaths investigations, meant that it became increasingly difficult to deliver COPFS' core tasks – to prosecute crime and investigate sudden and unexpected deaths – to the necessary high standard. This had an impact on many users of the services – victims, witnesses, defence agents, nearest relatives, and accused persons.

The increasing funding shortfall also had an impact on staff. Wellbeing and morale suffered and pay fell progressively behind the rates enjoyed in comparable public sector organisations. Staff turnover increased due to the more attractive salaries in other Government departments and this, in turn, had an adverse impact on operational effectiveness.

I am very pleased and grateful that over the last three years this shortfall was progressively recognised, culminating in a substantial increase earlier this year in COPFS funding to address these serious concerns.

As a result:

- COPFS' baseline cash resource funding for 2021-22 was increased by 17%, from £124.9m to £146.8m

and

- £5.6m was made available over three years to enable the pay of COPFS staff to reach parity with colleagues in other Departments.

I consider this funding to be sufficient for the normal level of casework based on pre-pandemic trends, with one caveat. The funding in the current financial year was calculated to meet 9 months of salary costs for a variety of new posts, on the understanding that it would take some time to recruit, but that an additional £4.3m would be added to the COPFS baseline in 2022-23 to enable full-year funding of the new posts.

I must, however, emphasise that the volume and complexity of our casework continues to grow. The volume of new High Court business has increased year on year between financial years 2017/18 and 2019/20, rising 46% over that period. The levels of business in Major Crime and Sexual Offences, which forms the bulk of our High Court business, continue to show increases. In line with established trends, sexual crime makes up almost 70% of High Court cases. The number of petitions in homicide cases are particularly high (up 31% on the last financial year). Further, the number of deaths reports has increased markedly in recent years. Between 01 April 2019 and 31 March 2020, COPFS received 10,921 death reports. Between 1 April 2020 and 31 March 2021, COPFS received 15,712 death reports.

Rightly, there continues to be a high level of public concern over the levels of rape, sexual offences and offences of violence against women and girls and the associated system response. COPFS is committed to working with partners to transform the way that the criminal justice system deals with these cases. We fully support the work underway to take forward the recommendations in the report from the Lord Justice Clerk's Review Group on the Management of Sexual Offence Cases, to which we contributed. We support the increased use of Evidence by Commissioner hearings to take evidence from children and vulnerable adult witnesses, and we are part of a pilot to test the use of Visually Recorded Interviews as evidence-in-chief of complainers in rape cases

The number of charges reported to COPFS with a domestic abuse identifier increased by 9% between 2019/20 and 2020/21. 92% of these charges were prosecuted in court and although the majority were prosecuted at sheriff summary level, the proportion of domestic abuse charges prosecuted at solemn level has increased over recent years, from 10% in 2013/14 to 20% in 2020/21. In 2020/21, 87% of the charges reported with a domestic abuse identifier were in cases where the accused was male. The introduction of the Domestic Abuse (Scotland) Act 2018 in April 2019 has contributed to an increase in the number of domestic abuse charges reported and, in some cases, this has enabled COPFS to prosecute behaviour that was not criminal prior to the implementation of the Act. There was a 48% increase in the number of charges reported under this Act in 2020/21, compared to 2020/19 and 31% of offences reported under the Act were prosecuted at solemn level.

Similarly, the volume of large and complex casework, particularly involving serious and organised crime, which has a such corrosive impact on communities, continues to increase. Operation Venetic, the largest intelligence-led disruption of organised crime in recent years, has provided an unprecedented opportunity to tackle the top tier of organised criminals in Scotland. It is having a substantial impact in terms of the further work required to investigate and prosecute this criminality. There has also been an impact on restraint and confiscation work, to ensure that action is taken to seize the proceeds of this criminality.

However, clearly the pandemic on the criminal justice system will have an additional impact for many years. The disproportionate impact upon women and girls given the volume of High Court sexual offence cases is particularly concerning. I am grateful, therefore, to Scottish Government Ministers for agreeing to provide the criminal justice system collectively with additional funding this year to enable those working within the system to begin to tackle the backlog in trials without affecting our baseline operational activity. COPFS has been provided with a share of up to £7m in 2021-22 to staff additional courts from 1st September onwards.

The main challenge which COPFS has faced in the current financial year has been to recruit sufficient suitably skilled and qualified staff, particularly entry-level legal staff and IT staff. Between the expansion of core funding and the recovery funding, we are planning to increase our staffing from 1879 in March 2021 to 2319 in March 2022, an increase of more than 400 people. It is a challenge to increase the staffing complement so significantly in a relatively short period of time, but we are making good progress, as the table below demonstrates. The current relatively high vacancy level is expected to be a temporary difficulty. In the meantime, underspends on

## CJ/S6/21/9/2

permanent staff expenditure are being diverted to some extent into additional overtime payments and the recruitment of some temporary staff.

I should note here that the staffing numbers have increased steadily year on year from 31 March 2018 to date as also demonstrated in the table below.

The table also provides current projections for vacancy filling from October 21 to March 22.

Date	Full time equivalent figure
31/3/18	1576
31/3/19	1691.7
31/3/20	1797.6
31/3/21	1879.7
30/6/21	1944.2
30/9/21	2027
	Projected figures (if required as vacancy rates are provided below)
31/10/21	2092.8
31/12/21	2224.8
31/3/22	2319.32

The vacancy rate at the end of September 2021 sat at 12.8%. Recruitment currently underway is expected to reduce this figure to 9.8% by the end of October with plans in place to further reduce this to 4.1% by the end of December and 0.2% by the end of March 2022.

Recruitment is primarily on a permanent basis with fixed term appointments used only for recruitment to Trainee Solicitor and a limited number of other posts. Fixed term appointments have reduced significantly since the peak of 241.9 FTE in March 2017 (205.9 excluding FT Trainees) to 61.87 at the end of September 2021 (this reduces to 14.87 when fixed term Trainees are discounted).

Internal temporary promotions or temporary responsibility (TR) appointments have reduced from 135.4 in March 2016 to 53.6 in September 2021.

The graphs in Annex A evidence:-

- Increase in FTE and projected FTE
- The steep decline in fixed term contracts
- Reduction in the use of Temporary Promotion and TR appointments

COPFS has made savings in the current year as a result of remote working, for example less staff business travel, and lower witness costs due to court closures in the first half of the financial year. These have been largely offset by additional costs of:

- PPE;
- Implementing safety measures in offices;

- Increased heating costs due to the need for increased ventilation;
- Increased volume of mobile working equipment for staff.

Looking ahead to 2022-23 and beyond, I regard the following as priorities in respect of COPFS funding:

- Our baseline staff funding must be maintained in real terms to enable the requirements of future pay policies to be met without impacting on service levels. It is imperative that the additional funding provided to achieve pay parity is baselined in future years, and that COPFS staff do not fall behind colleagues in other Departments ever again. It is also very important that the support services, such as HR, learning and development, IT, and Finance and Procurement, are maintained at an appropriate level as operational staffing levels increase.
- Our baseline non-staff funding must be increased in line with expected inflation. Over the years COPFS have made very significant savings in non-staffing expenditure. As a result it has fallen as a proportion of overall spend from 41% in 2009-10 to 25% of the COPFS budget in 2020-21 (excluding litigation costs). Successive inflationary increases have been absorbed as part of COPFS efficiency savings. However COPFS will not be able to absorb inflation in future years due to contractual agreements and the scope for efficiency savings being exhausted.
- The additional funding for court recovery must be sustained. It will take many years to remove the trial backlog, and so a return to pre-pandemic levels of activity is not expected in the foreseeable future. This must be recognised in funding for the whole criminal justice sector.
- Investment in our digital transformation programme must be maintained. The increases in staffing costs for COPFS has been minimised by the more efficient processes and procedures enabled by the digital transformation projects that COPFS has been continually pursuing for many years. Had the digital transformation projects not been possible, the requests for funding for additional staff and non-staff resource would have been greater.

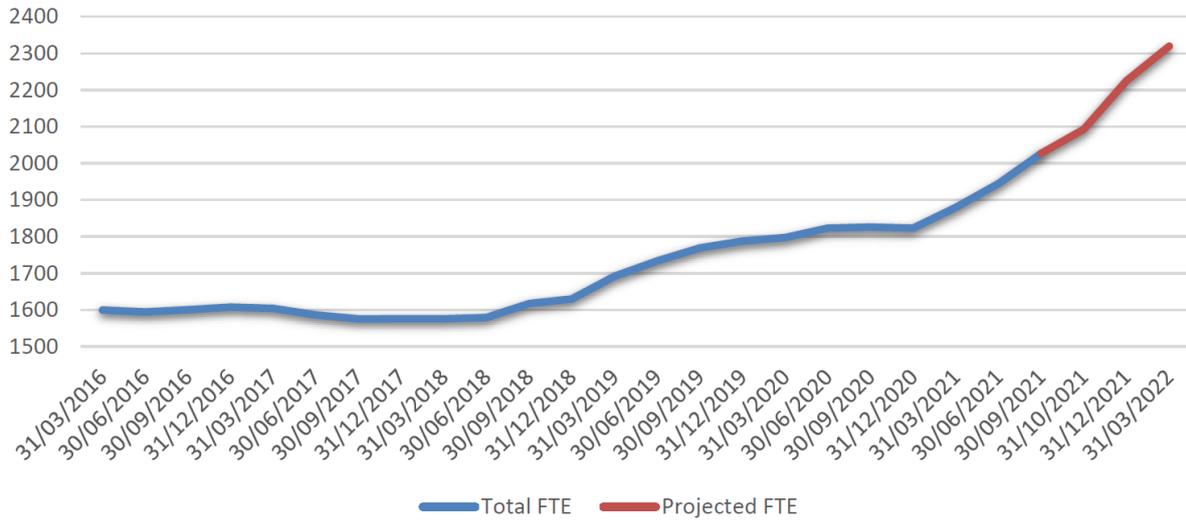
It is crucial to bear in mind when considering COPFS resource levels that it is a demand-led organisation where increased numbers of serious cases, increasing complexity of cases and the need to adapt to legislative developments all require appropriate resource in order to meet public expectations. From time-to-time additional resources are required urgently due to the unexpected impact of major cases. I am grateful that the Scottish Government has been prepared on various occasions in recent years to provide such additional resources in-year.

In particular, it is important for me to reiterate that there has been no impact on the COPFS budget as a result of the recent malicious prosecution cases as these are underwritten by Scottish Government with in-year transfers to directly cover the costs of damages and expenses settlements.

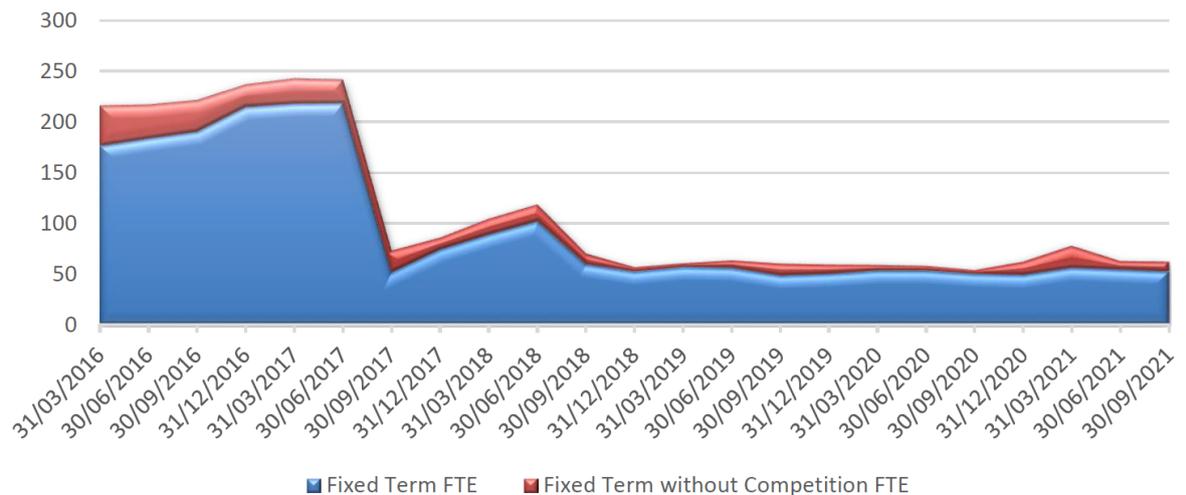
**Lord Advocate**

Annex A

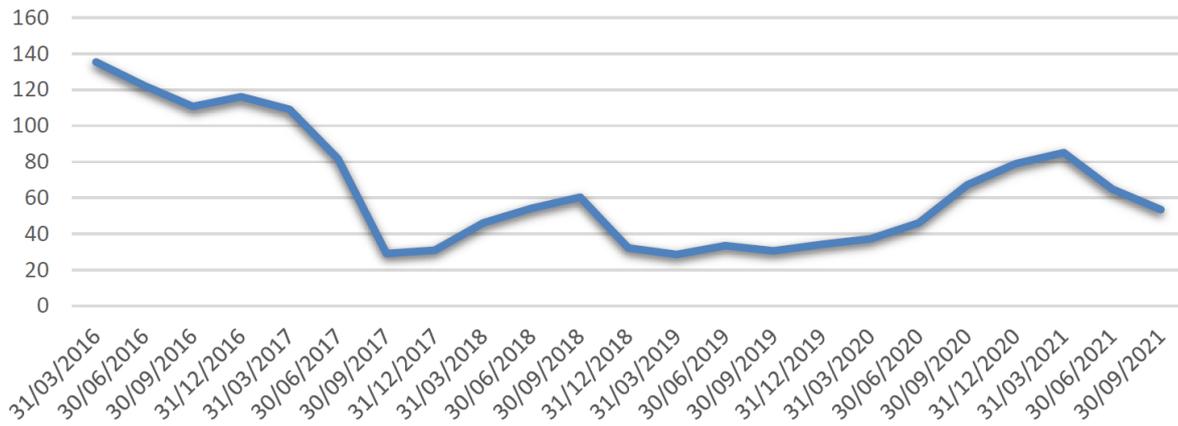
**COPFS Total FTE between 31st March 2016 to the projected FTE in 31st March 2022 (Including staff on paid leave, temporary staff and staff seconded into COPFS)**



**FTE of Temporary staff (FT & FTW) Between 31st March 2016 to 30th September 2021**



## FTE of Staff on Temporary Promotion and Temporary Responsibility Between 31st March 2016 to 30th September 2021



### **SPS**

The SPS welcomes this opportunity to contribute to the Committee's Pre-Budget Scrutiny of the 2022/2023 Budget. SPS has also provided additional information in respect of previous budget allocations which is attached at Annex A. This provides an overview of the current and last two years' budget position.

### **Introduction**

The Scottish Prison Service, like many organisations, is facing internal and external influences that we need to anticipate and respond to in the short, medium and long-term. As a demand led service, often viewed as but arguably not the end stage in justice, we understand the changing nature of our prison population has brought about and will continue to bring increasing complexities to delivery. Developing the use of digital technology and the potential for creating capacity and efficiency is a key area of investment. Whilst COVID-19 has had a significant impact on the SPS we have found unanticipated benefits that have arisen because of innovation, problem solving and thinking creatively in the face of an unprecedented situation. This is something we want to harness as we move forward.

The modernisation of the estate (with currently committed projects) will feature as one of a multitude of areas of development to drive the SPS forward. Moving to a period of significant capital investment projects has influenced our thinking and intent in relation to governance and central structures which will support the organisation now and in the future. We understand that recreating and building strong foundations for SPS to move forward, key organisational development activities (such as structure, leadership, recruitment and retention) are essential. Our internal skills mix needs to reflect the need to support large areas of investment such as digital technology. Within the short term this requires the right scope and purpose to realise benefits which will extend beyond the next financial year.

### **Current Pressures**

There is no doubt that responding to COVID-19 placed significant financial demands on the SPS which required resource and singular focus. This has not fully dissipated. We continue to experience the impact of COVID-19 and will continue to do so for many months to come as Scotland moves through to recovery. The impact to those in SPS care and to those who work in prisons has been substantial and as the organisation moves into its recovery journey and contributes to the wider recovery agenda, the added financial pressures that the pandemic has placed on the public purse will (no doubt) continue into 2022/23.

COP26 has necessitated significant planning in collaboration with justice partners on the financial implications for SPS. The impact across the prison estate is, at present, unknown however monitoring and response arrangements are in place.

### **Short – Medium Term Challenges**

It is acknowledged that SPS faces a number of challenges and pressures in its resource budget these include:

- pay costs, including increases to employer's national insurance contributions
- introduction of the new woman's strategy and resulting operating model.
- Resource impact of HMP Highland, Glasgow and HQ relocation as part of the capital transformation programme.
- Impact of increasing prices for goods, particularly food and utilities.

It should be noted that staff costs represent more than 57% of SPS' resource budget. The 3 private sector contracts for operating private prisons and the prisoner escort service also currently account for 22% of the allocated resource budget. These are commercial contracts with built in annual increase price mechanisms for which SPS has no control. For example, the contract at Addiewell prison has an annual price increase mechanism of RPI (retail Price Index) + 1.5%.

The potential return of HMP Kilmarnock in March 24 to public ownership will increase the control mechanisms. This undertaking does, however, require project funding in 22/23 to ensure a smooth and effective transition.

There are also ongoing cost increases associated with the projected rising prisoner population once Courts fully re-open as well as those who are spending longer in custody. The COVID-19 pandemic has also affected the SPS operating model, both exacerbating and creating new demands on how we deliver core and rehabilitative activities.

Furthermore, the impact of multiple pressures has affected supply routes which, whilst being closely monitored, is likely impact to varying degrees on procurement and construction activity. We are already experiencing delays in capital projects however we also continue to monitor any potential impact on operational stability, as both are of close concern to the SPS.

### **Strategic Financial Planning**

Budget allocations for next year are currently being considered as part of the wider Scottish Government budget process and future costs pressures identified across the SPS will form the basis of discussion around the organisation's budget going forward into 2022/23.

As an organisation we must attend to long term planning with, at times, uncertain and externally controlled mechanisms impacting on delivery. The information highlighted above provides the committee with attention paid to tangible and intangible assets. The benefit of long term capital investment programmes is not easily identified within one financial year. However, they are necessary to build on the foundations of a progressive, sustainable and fit for purpose prison service.

Today SPS holds an increasingly complex population which presents with a multitude of issues all of which require operational response, balance and consideration of best fit with the existing physical estate. This population is often composed of: groups of people who are in direct conflict with one another representing the increasing presence of those involved in or convicted of organised crime, those who present with a multiplicity of complex mental, social, physical and healthcare needs; those who by the nature of their offence require to be kept separated from others, those who simply cannot cope and those who present a level of risk which has the potential whilst in

## **CJ/S6/21/9/2**

custody to destabilise a prison or require close collaboration and work with partners due to their risk on release. Additionally, the experience of COVID-19 has brought a public health approach to the forefront of thinking. Unexpected lessons, benefits and consequences arising from the pandemic are likely to continue in on-going strategic intent and the lens through which we develop policy and practice.

In summary, SPS requires to move forward to a new normal whilst ensuring sustainable and progressive change, capitalising on digital technology and ensuring our capital estate programme matches and enables these changes.

## ANNEX A

## SPS - Budgets 2019/22 &amp; 22 Outturn Position

	Budget	Budget	Budget	Outturn (1)
	2019-20	2020-21	2021-22	2021-22
	£m	£m	£m	£m
Resource	312.2	342.2	354.6	353.9
Non Cash	34.0	32.2	32.8	32.8
Capital	47.5	67.8	72.8	65.5
<b>Total</b>	<b>393.7</b>	<b>442.2</b>	<b>460.2</b>	<b>452.2</b>
<b>Public Sector</b>				
Pay	177.9	198.3	202.9	202.4
Non-Pay	36.0	42.5	45.4	46.7
<b>Total Running Costs</b>	<b>213.9</b>	<b>240.8</b>	<b>248.3</b>	<b>249.1</b>
Other current Costs	31.6	32.5	34.8	34.7
Less current receipts	-7.5	-7.2	-6.1	-6.1
Capital Charges	34.0	32.2	32.8	32.8
<b>Public Sector Operating Expenditure</b>	<b>272.0</b>	<b>298.3</b>	<b>309.8</b>	<b>310.5</b>
<b>Private Sector</b>				
Privately managed Prisons	47.8	49.7	49.8	48.4
Prisoner Escorting and Court Custody	26.4	26.4	27.8	27.8
<b>Private Sector Operating Expenditure</b>	<b>74.2</b>	<b>76.1</b>	<b>77.6</b>	<b>76.2</b>
<b>Total Operating Expenditure</b>	<b>346.2</b>	<b>374.4</b>	<b>387.4</b>	<b>386.7</b>
<b>Capital (net of receipts)</b>	<b>47.5</b>	<b>67.8</b>	<b>72.8</b>	<b>65.5</b>
<b>Total Del as per SG Allocation</b>	<b>393.7</b>	<b>442.2</b>	<b>460.2</b>	<b>452.2</b>

(1) Outturn position at Month 6

(2) AME not included above

(3) 2020-21 Actuals reconcile to P23 of annual accounts -excluding AME (£414.7m +£1.3m AME = £416m)