



FACULTY OF ADVOCATES

Written Evidence to

Criminal Justice Committee - Pre-Budget Scrutiny 2027/28

1. What are the main budget and staffing pressures facing your organisation or service, and how do these affect staff wellbeing, safety and workload?

The main pressures for members are as a result of the increase in criminal business. This has been brought about by an increase in the number of cases being indicted along with the ending of the suspension period for time bar calculation. The increased cases are, it would appear, as a result of an increase in reporting, both of historic and recent matters, along with increased investigation of domestic abuse and violence against women and girls.

As identified by Yvette Greener of COPFS to the Criminal Justice Committee of the Scottish Parliament on 9 September 2026, "overall, since 2024-25, there has been a 19 per cent increase in demand and, of that, 36.5 per cent relates to the High Court. That is purely due to the serious nature of the crimes that we are dealing with. Naturally, they take longer to progress, as they are more complex. There are also lots of historical sexual abuse cases, which, in some instances, have many complainers linked to them. That all adds up to a larger volume going through".

Each case, however, requires to be fully prepared and appropriately defended. Where counsel is engaged in court work, the preparation for future cases cannot be undertaken during the working day, and requires largely to be done outwith what would be considered normal working hours. Those hours are hours taken away from

counsel's family life and adversely affect the quality of life both for counsel, for counsel's spouse or partner, and counsel's children (and anyone else for whom counsel has caring responsibilities).

This increased level of business has an effect not just upon counsel but also on clerking staff. Of the two major criminal stables, Black Chambers has 46 members, of whom 18 are King's Counsel; Optimum has 52 members, of whom 7 are King's Counsel. Each stable has a Practice Manager and three deputies, who have collectively to manage counsel's diaries and ensure that the instructed work is appropriately covered, resulting in long and highly stressed workdays.

2. How are funding constraints affecting the quality of services provided to offenders, victims and the wider public? What impact is this having on confidence in the justice system?

The Faculty of Advocates Criminal Bar Association (FACBA) is committed to its members demonstrating excellence in advocacy. Notwithstanding what was stated by the Vice Dean to the Criminal Justice Committee on 9 September 2026, namely that fees are worth 37% less in real terms between 2005 and 2026, members work long hours, often outwith the ordinary working day, to ensure that those for whom they act receive the best representation possible. Again, as identified by the Vice Dean, the risk presents itself that the calibre of those coming to the Bar will be lessened as some view their careers elsewhere. Any lessening in the calibre of practitioners will have an impact upon the standard of both prosecution and defence, an impact upon witnesses and ultimately an impact upon the standard of the judiciary.

It is in the interest of an accused person to have his or her trial dealt with within a reasonable time. Beyond this, it is enshrined as part of the right to a fair trial within Article 6 of the European Convention on Human Rights. It is in the interest of a complainer to have the case resolved and, if appropriate, any rights vindicated within a reasonable time. It is in the wider public interest that the general populace has

confidence in a criminal justice system that deals expeditiously with business before it. Each case that proceeds to trial involves at least one accused, and frequently more. At a minimum, each case will require (in terms of those with a speaking role) a judge, a prosecutor, and counsel. This does not factor in the additional staff that are no less essential, such as the clerk, the macer, the instructing agent, and the security officers staffing each court. Additionally, there are the police officers who are stationed within the court building, the Crown noter and, of course, the fifteen jurors and the witnesses involved in the case. It is axiomatic, but frequently overlooked, that the number of trials capable of being run simultaneously throughout Scotland depends both on the availability of court rooms, and the available judiciary.

3. Are there any budget or funding arrangements that make it harder for organisations, such as the police, courts, prisons or local services, to work together effectively or share technology?

The nature of the instruction of counsel is that it is the instructing agent who is first instructed by the accused person. It is the instructing agent who obtains disclosure from the Crown, which is then passed on to counsel. As such, and until such time as an advocate depute is allocated to a case (normally at the time that the case is indicted to a preliminary hearing), there is normally limited, if any, contact between counsel and the Crown. Murders tend to be an exception to that practice, along with cases which are, due to size, complexity or public interest, allocated to a particular advocate depute. Efforts are being made, and discussions entered into, to promote a disclosure system between the Crown and counsel. This will be of significant use as it would then result in counsel not being reliant upon prompt disclosure by agents, which can sometimes be more of a hope than an expectation. The consequence of this will be that counsel is fully seised of the brief at an earlier stage, which may prompt earlier resolution of cases, although it would be impossible to calculate with any certainty how many cases might achieve that resolution.

Beyond this, FACBA is not in a position to comment upon budgetary or funding arrangements between the police, courts, prisons or other local services.

4. What single investment or change should the Scottish Government prioritise in the next budget to reduce pressure on frontline services or improve the performance of the justice system?

As was apparent from what has been said to the Criminal Justice Committee in September by SCTS, the Law Society, COPFS and Faculty, the present situation is multifaceted, and is therefore not capable of solution by merely one step. FACBA shares this view. At the same time, it would be naïve in the extreme to hope that all issues can be financially resolved, given limitations to the public purse.

However, the most productive single investment would be the increase in the numbers of the judiciary. The number of senators is limited by Act of Parliament, and, over the past years, an increasing number of sheriffs have temporarily sat in the High Court. This, of course, denudes the court in which they normally sit of their services, and cases are frequently indicted to the sheriff court that are of no little gravity which might, in other times, have seen indictment to the High Court. It may be, then, that an increase in the number of shrieval appointments would allow both for the High Court to run at capacity whilst also ensuring that the country's sheriff courts are able to fully function. It has, though, to be recognised that the number of judges capable of sitting at any one time is simultaneously limited by the numbers of courts available. Similarly, it is worthwhile reiterating that the number of trials capable of simultaneously running is also dependent upon there being sufficient counsel to appear for each accused person.

5. Are there changes to ways of working, governance or cross-agency collaboration that could improve outcomes or reduce pressures without requiring significant additional funding?

FACBA is not in a position to comment upon collaboration between COPFS and the various agencies that are involved in reporting crimes. As far as FACBA's involvement, and as noted in answer 3 above, steps are being taken to integrate

counsel into defence disclosure. At the risk of being technologically naïve, this will involve a replication, in electronic format, of that which is already disclosed to defence agents, and so it is not anticipated that any significant additional funding will result.