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Kenneth Gibson MSP
Convener
Finance and Public Administration Committee

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4 December 2023

Dear Convener

Thank you for your letter of 2 November, which seeks further information about estimated costs relating to the Victims, Witnesses, and Justice Reform (Scotland) Bill.

The Financial Memorandum which accompanied publication of the Bill was developed in close collaboration with a range of justice partners to assess the likely costs and potential savings arising from the Bill's provisions, based on the information available at that time. The Financial Memorandum was clear in stating that these estimates are subject to uncertainty for a range of reasons, including that operational decisions on how to implement the provisions of the Bill will influence the costs arising.

I have set out information below that I hope will provide clarification about the estimated costs referenced in your letter, which relate to the Part 5 of the Bill – the creation of a Sexual Offences Court - and Part 2 of The Bill – embedding trauma-informed practice.

Sexual Offences Court

The establishment of the Sexual Offences Court (“the Court”) will not in of itself generate new cases to be dealt with by COPFS and the broader criminal justice system, or make existing cases more complex. It does not alter the burden or standard of proof and will not require additional evidence to be gathered or witnesses led. Rather, the Court seeks to redistribute existing cases across a reformed and enhanced court structure which makes more use of trauma informed approaches. As such, any further costs or savings that arise from the Court will largely derive from the specialist processes and procedures set out within the Bill as well as those developed by the Court, and the manner in which individual justice partners, including COPFS, organise their business to respond to these.

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As much will depend on operational decisions about how to implement the Court and deliver its objectives it is difficult to accurately predict the full costs associated with establishing the Court. This is particularly relevant when considering the Court's jurisdiction and sentencing powers which enable it to hear all solemn level sexual offending and does not reflect the current distinction between solemn cases heard in the High Court and those heard in the sheriff courts.

This uncertainty over predicting future costs was discussed with COPFS when preparing the Financial Memorandum to estimate the costs associated with the Court and I note that this is something that they have similarly acknowledged in their written response to the Committee. In that response, COPFS has sought to provide more detail on what additional costs they expect to incur based on how changes in the management of sexual offence cases arising from the creation of the Court may influence decisions on how they prepare and present these cases.

Their submission identifies key factors influencing resource implications. The first is the change in the way they will deal with cases involving solemn level sexual offences which, but for the creation of the Court, would otherwise be heard in the sheriff courts. They consider that an additional £17 million per annum is required to deal with these 'uplifted' cases. I note from their submission that this figure is based on a set of assumptions based on current practice, that they predict the cost of prosecuting those existing cases in the new Court would increase sixfold.

However, as noted above, in creating the Court, the Bill is not prescriptive in how justice partners ought to structure their own resources or change their practices to respond to the new court structure. It also offers an opportunity to consider new ways of working. Whilst relying on assumptions based on current practice is one way to identify potential costs, it does have its limitations in that context and I note that COPFS' letter does not provide specifics in relation to the 'uplift' that will be incurred in those cases and where those additional costs will be incurred.

The second factor of note is the consideration of the expansion of pre-recorded evidence, leading to anticipated additional costs of £3.9 million per annum. As set out in the Financial Memorandum, the expansion of pre-recorded evidence is something already underway with the phased implementation of the Vulnerable Witnesses (Criminal Procedure) (Scotland) Act 2019. Some of the costs identified would therefore have been incurred through further commencement of that legislation which permits the Scottish Ministers to introduce a presumption in favour of pre-recording the evidence of adult vulnerable witnesses in solemn level sexual offences cases.

The creation of the Court offers a significant opportunity for individual justice partners to consider how to best achieve our shared ambition of improving the treatment of serious sexual offences and complainers' experiences of the justice system. That will not be cost neutral. However, as the Committee will know, COPFS already spends a significant part of its budget on preparing and presenting these cases which has been supported by increasing record levels of funding in recent years. COPFS received £196.6 million in financial year 2023/24, increased from £179.7 million in 2022/23 and overall by 75% from 2016/17. We will continue to engage with COPFS around what additional funding requirements arise as a result of the Court recognising that this must be done within a sustainable budget.

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One option we are exploring is the phased implementation of the jurisdiction of the Court, to begin with High Court level sexual offences in the first instance, affording the benefits of the Court to complainers in the most serious cases first whilst continuing to work with COPFS and others on the additional costs of ‘uplifting’ cases at sheriff and jury level.

Trauma-informed practice

In relation to Part 2 of the Bill, the Financial Memorandum sets out expected costs associated with implementing the new principle on trauma-informed practice, which justice partners identified during the Bill’s development. However, as the Financial Memorandum explains, the Bill does not mandate a specific approach to implementing trauma-informed practice. This means that the ultimate approach to – and costs of – implementing Part 2 will depend on the operational decisions that each organisation takes.

The Bill creates a new requirement for the Standards of Service for Victims and Witnesses that criminal justice agencies set (and report on) to include standards on trauma-informed practice. Whilst it was not anticipated that these provisions would require the organisations to develop new IT capacity, Police Scotland noted that there could potentially be a financial impact, if it meant that changes were needed to their IT systems to enable relevant data to be captured and reported on.

Police Scotland already reports on each of its existing Standards for Victims and Witnesses annually. The most recent report is available [here](#). As can be seen, the report focuses on narrating how Police Scotland is working to deliver each of its standards, rather than on presenting detailed quantitative data. The standards are about trying to improve victims’ and witnesses’ qualitative experiences, and many do not lend themselves to being reported on as measured outputs.

Ultimately, following discussion with Police Scotland, the potential need to expand IT capability was not included in the Financial Memorandum, because the Bill does not require Police Scotland to report on trauma-informed practice standards in a way that would necessitate new IT capabilities. If Police Scotland decide to approach it in this way, that is a discretionary decision they would be making which is not required by the provisions of the Bill.

On training, the Financial Memorandum sets out that an e-learning package for all police officers and staff, costing around £1,000,000, is the minimum expectation - and it notes that more in-depth training could be needed for specialist officers, at additional cost. The Financial Memorandum also explains that it is anticipated that, after the one-off costs of initial implementation, training on trauma-informed practice would subsequently be incorporated into the standard training given to probationers.

Finally, in respect of your question about how the estimated costs will be met, the need for funding for implementation of provisions in the Act will inform future spending reviews and decisions made on allocations to individual organisations. Such decisions will be made within the overall priorities and demands for funding at the relevant time. In light of the scarce financial resources available, decisions about how best to implement including consideration of phasing will be a necessary and important element of how the benefits of the provisions can be delivered in an effective and efficient manner.

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I hope that this provides clarification about the matters you have highlighted and assists with the Committee's scrutiny of the Bill.

I have sent a copy of this letter to Convener of the Criminal Justice Committee for their information.

ANGELA CONSTANCE

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