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Local Court**

Richard Leonard MSP
Convenor
Public Audit Committee

Your ref:

Our ref:

Date: 22 March 2024

The 2022/23 Audit of Scottish Prison Service

Thank you for your letter of 9th February 2024 and for providing COPFS with an opportunity to comment on a particularly challenging area of our business. The Crown Agent has asked me to reply on his behalf.

There has been a significant impact upon COPFS, as well as other stakeholders through the duration of the SCCPES contract in respect of which I provide further comments below. In relation to the questions posed by the Committee:

Q1: The Committee understands that the SCCPES contract is managed by the Scottish Prison Service (SPS) on behalf of the MALG. The Committee is keen to understand:

- ***The level of input the COPFS had to the terms of the SCCPES contract prior to it being awarded to GEOAmev by Scottish Ministers in March 2018.***

Although COPFS was one of the smaller stakeholder organisations consulted in terms of developing the procurement strategy and implementation plan, it was involved at all stages and ensured that specific COPFS interests were reflected in the letting of the contract in March 2018. This included COPFS being formally represented as part of the assessment/scoring panel of the sole bid of the procurement process.

- ***The extent to which any concerns the COPFS may have about the contract are addressed at quarterly MALG meetings, and whether meeting quarterly is sufficient.***

Concerns in relation to the contract have been and continue to be raised at every MALG meeting. Concerns are discussed and noted at the meeting and are taken forward by SPS as the contract manager with GEOAmev. As a result of concerns previously raised, a Performance Improvement Notice (PIN) was issued in relation to non-court escorts and the failure to deliver prisoners to VIPER units. Under normal circumstances, quarterly meetings would be sufficient. However, due to the multiple and ongoing issues, it is the view of COPFS that the MALG meetings should be held monthly.

- ***The role the COPFS will have in the retendering process for the contract, which is expected to begin in 2024.***

This matter has not as yet been discussed at the MALG. As per point 1, we would expect COPFS having the same involvement in the retendering process as we have had previously.

Q2: One of the key messages in the section 22 report is that "The ongoing poor performance of the contract is resulting in delays and inefficiencies across the justice sector, impacting on policing, prison services and the courts."

The Committee wishes to understand the extent to which the work of the COPFS is impacted by the poor performance of the contract. In particular, we would welcome specific examples of the impact on the COPFS, including the associated costs to your organisation.

As indicated above, COPFS has been adversely impacted in a number of ways for the duration of the contract. I provide below, a summary of the main categories of COPFS business impacted as well as specific examples.

Impact on Victims/Complainers/Witnesses – This issue has also been raised at the MALG. We have experience of several occasions in relation to Evidential Hearings fixed in the High Court where the prisoner has not been delivered on time. Despite the attendance of victims and witnesses these cases have required to be postponed to a later date due to the estimated time of arrival or non-delivery of the prisoner. On some occasions the victim/witness has reported that they no longer wanted to engage with the prosecution process because of these delays, distress and inconvenience. COPFS staff have then required to provide additional support to try to get them to re-engage in the court process. I would highlight 2 recent cases in the High Court. In one, there were 16 family members or nearest relatives in attendance for a murder case which was due to call at 9.30 am. The accused was not delivered until approximately 5 pm. This had a significant personal impact upon them. On the same day there were victims and witnesses in a rape case who were in the same situation with the accused in that case being delivered at 5pm.

Provision of a safe working environment – The contract provides that GEOAmev should not only provide prisoner escort services but also have personnel to sit in the court docks where accused persons sit during court hearings. The presence of such personnel provides additional confidence to court users including COPFS staff and also victims and witnesses. The absence of such staff erodes the confidence of court users. There have been more instances of persons in custody attempting to escape during court appearances. Occasionally COPFS staff have felt required to become involved in incidents in court involving accused persons, and on one occasion with an accused person who had brought a knife into court.

VIPER (Video Identification Parades Electronic Recording) – The VIPER is an important part of the investigation and evidence gathering process. Very often VIPER evidence is required to establish a sufficiency of evidence against an accused both for the prosecution but also to establish sufficient information to remand the accused for trial. Prior to the PIN being issued in relation to VIPERs there were issues every day with prisoners not being delivered to VIPER units with no communication until that day to inform our staff of issues or potential issues. The issue had to be escalated in respect of several cases where the VIPER parades were critical to cases being progressed at the full committal stage after an accused person has initially been held in custody for 7 days. In one case the accused had to be released on bail because the VIPER had not taken place and COPFS was not in a position to demonstrate to the court that there was sufficient evidence to seek his remand in custody. There have been a number of further cases where the VIPER had been cancelled on several occasions, some up to 10 times. Those were predominantly for cases with vulnerable witnesses so as well as having an impact on the case progression and COPFS staff and Police resources, it also had an impact on victims and witnesses. Since the PIN was issued we have noted improvement but we are still seeing some VIPERs being cancelled.

Custody Business – Issues relating to numbers of individuals in custody who can be safely

transported at the same time. Where the service provider has had insufficient staff to transfer individuals from police custody suites or prisons to court locations, this has had an impact on the time of day when proceedings in court can call. The effect is a delay to the start of court times and as a consequence the delay to the end of the court proceedings. In response to some custody courts running late into the evening the Sheriff Principals issued a Practice Note in September 2023 to regulate court finishing times (7pm on a Monday and 6pm on Tuesday to Friday, with an exception where the court papers and the accused was available to the court by those deadlines). If the accused was not brought to court within those timescales the accused had either to be returned to the police custody suites or prison or kept in those establishment for a further day and brought back to court the following day. To mitigate this adverse impact, COPFS and SCTS staff introduced a process to assist GEOAme staff with the throughput of the custodies. This entails considerable additional work for COPFS staff. Additional liaison between criminal justice partners has been introduced to communicate the time at which individual cases have been reported by the Police, marked by the Procurator Fiscal, and the necessary paperwork delivered to SCTS. This additional work has been carried out across multiple Sheriff Courts to assist GEOAme staff with their contractual responsibilities. Additional meetings have been established on a Monday and Friday to monitor the position in relation to custodies. The purpose of these additional communications and meetings is reduce the number of occasions where an accused has required to be kept in custody for longer than would normally be required.

Communication – There are widespread communication issues with GEOAme which have been highlighted on numerous occasions at the MALG. This is predominantly in relation to the delivery times of prisoners for court appearances. Throughout the day COPFS and SCTS are given estimated times of arrival for prisoners. These change regularly and repeatedly and the information is not always correct. On occasion SCTS and COPFS have been given conflicting information. Due to the lack of communication and accurate information, court business is being adjourned on a regular basis, including Sheriff & Jury trials which have negatively impacted victims and witnesses. These issues also have a financial implication as witnesses who have been cited to attend court and are not able to give evidence still require their reasonable expenses to be paid. We have been given estimated time of arrival for some prisoners required for both Summary and Sheriff & Jury trials as late as 6 pm which means courts need to sit significantly past working hours which inconveniences all stakeholders.

Duration of courts – where the service providers has insufficient staff to transport prisoners this often involves courts taking longer to progress the business. For example, rather than having a steady stream of custodies in a custody court, such courts can be punctuated by long periods of inactivity between the accused being presented to the court. This has been particularly prominent at Glasgow Sheriff Court. During one visit it was noted that there was a period of around 10 minutes between each new custody case being presented.

Start and end times of courts – There have often been delays in bringing accused in custody to the courts. Due to what has been reported as insufficient numbers of GEOAme staff, courts often take longer than they would otherwise. It is not uncommon for the custody court at Glasgow to sit well into the evening/night, despite the Sheriff Principals' Practice Note. Some other courts can sit late particularly on a Monday due to increased number of custodies over a weekend. COPFS considers that much of the delay relates to prisoner escort and related issues. Late running custody courts often require additional overtime payment to be incurred. It also means that some staff have been unable to work at 9am the following day if they have been in the custody court till 10pm.

Ratio of custodies to GEOAme staff – It is understood that for the safety of GEOAme staff and others, there requires to be certain ratios to allow a safe working environment within courts. Accordingly insufficient numbers of GEOAme staff constrains the ability to get through the business with more transports required and more delay.

Defence ability to consult clients – Defence agents have reported to COPFS that they have experienced difficulty getting access to their clients to take instructions before court appearances. This may be due to the accused being delivered late or the service provider being unable to accommodate effective consultations when required. Again this impacts on the ability of court business to be progressed during the court day and has created delay.

Q3: The section 22 report concludes that –

“It will be important for SPS and their partners, Scottish Courts and Tribunals Service (SCTS), Crown Office and Procurator Fiscal Service (COPFS) and Police Scotland to work together with support from the Scottish Government, to consider all options available to ensure the safe and effective delivery of prisoner escorting services both now and, in the future,”.

We are open to working with stakeholders in considering all options available to improve the prisoner escorting services. SPS and SCTS will I am sure provide specific areas that can be considered. From a COPFS perspective, one area that we believe should be considered as part of the next contract is in relation to a virtual or remote attendance at court. With the advance in technology, personal attendance at court and the need to move some prisoners across the county unnecessarily could be significantly reduced.

The contract might also seek to clarify the role of the service provider within court and the extent to which staff have a responsibility for court security. It is understood that the current service provider is of the view that its staff are there to protect persons in custody and protect the public from persons in custody. The position is less clear in relation to their role in the dock where an accused person is not in custody and what role they should play in any disturbance or security issue arising in court. Police Scotland may wish to make representations as to roles and responsibilities in this regard.

I hope that this information is helpful to the Committee.

Yours sincerely
Jennifer Harrower
Deputy Crown Agent, Local Court