

Justice Committee

Letter from the Crown Agent and Chief Executive to the Convener

Thank you for your letter of 7 March 2013.

I note that you have requested clarification on four points.

For ease of reference I have provided a response below in respect of each under the headings set out in your letter.

It may be of assistance if before turning to these responses I set out some initial information regarding roles and function within COPFS and the circumstances which surround appointment to the offices of Crown Agent, Procurators Fiscal and Advocate Deputes.

Role and function of the Lord Advocate

The Lord Advocate is the Ministerial Head of the Crown Office and Procurator Fiscal Service, and the head of the systems of criminal prosecution and the investigation of deaths in Scotland and I understand the Committee's question to relate to that aspect of the Lord Advocate's role.

As the Committee is aware in addition to his role as independent prosecutor in the public interest the Lord Advocate is a Minister in the Scottish Government and is also the chief legal adviser to the Scottish Government on Scottish legal matters, both civil and criminal.

The International Association of Prosecutors' 'Standard of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors' states that the use of prosecutorial discretion 'should be exercised independently and be free from political influence' and requires prosecutors to 'perform their duties without fear, favour or prejudice'.

No one can require the Lord Advocate to institute criminal proceedings or to abandon a prosecution. It is fundamental to the prosecution of crime in Scotland that decisions in individual cases are immune from political influence or other pressure.

The COPFS Prosecution code which can be found at www.crownoffice.gov.uk/Publications/2005/06/Prosecution-Code contains a general explanation of the various factors which may properly influence prosecutorial decisions.

Role and function of the Crown Agent

The Crown Agent is a Senior Civil Servant appointed as Chief Executive of the COPFS, acting as civil service head of the staff and principal legal advisor to the Lord Advocate on prosecution matters.

Present or former Law Officers play no part in the appointment process in respect of the Crown Agent.

Role and function of Advocate Deputes and Crown Counsel

Advocate Deputes, together with the Lord Advocate and Solicitor General, comprise Crown Counsel. Crown Counsel consider the sufficiency of available evidence in law in serious and sensitive cases which have initially been reported to Procurators Fiscal by the Police and other Specialist Reporting Agencies (SRA) and decide on the appropriate prosecutorial response to be made in the public interest and when appropriate prosecute cases in the High Court.

Crown Counsel is a collective entity. Their individual decisions are noted publically as having been made by “Crown Counsel” and no individual is identified as the specific decision maker (in the same way for example as decisions are said to have been made by “Parliament” or “Government”)

Role and function of Procurators Fiscal

Procurators Fiscal act as the local representative of the Lord Advocate within a Sheriff Court District. In respect of all cases reported to them by the Police and Specialist Reporting Agencies, which do not require decision by Crown Counsel, they consider the sufficiency of available evidence in law and decide on the appropriate prosecutorial response to be made in the public interest. When appropriate, Procurators Fiscal prosecute cases in their local courts on behalf of the Lord Advocate.

Holding of Lord Advocate’s Commission

The Crown Agent does not hold a Commission from the Lord Advocate.

Procurator Fiscals and Advocate Deputes do hold the personal Commission of the Lord Advocate.

Processes to deal with any complaint of alleged criminal conduct by a Law Officer, former Law Officer, Procurator Fiscal or person working within COPFS (or of alleged criminal conduct by a family member or close associate of any such office holder or person working within COPFS)

The aim of the processes that would be put in place if a Standard Police Report contained a complaint of alleged criminal conduct by a Law Officer, former Law Officer, Procurator Fiscal or person working within COPFS (or of alleged criminal conduct by a family member or close associate of any such office holder or person working within COPFS) is to ensure that “justice is seen to be done”.

The Latin phrase “**quis custodiet ipsos custodes?**” (Who guards the guardians?) encapsulates the question that might otherwise legitimately be asked by the public in such circumstances.

The type of process followed in such a case aims to ensure transparency and make clear the necessary emphasis on independence as to decision making. This is in

order is to avoid any suggestion that the relevant Law Officer, Procurator Fiscal or person working within COPFS had any influence on the final decision as to action in such a case.

Against that background I hope that the Committee find the following responses to be of assistance:

1. Confirmation of how complaints of a non criminal nature against the Lord Advocate and whether they would be dealt with in terms of the COPFS Customer Feedback Policy.

The route followed to deal with a complaint of a non criminal nature against the Lord Advocate would depend on the specific nature of such a complaint.

If it referred to behaviour or conduct by the Lord Advocate then this would be dealt with under the Ministerial Code.

If the complaint related to prosecutorial decisions, for example a decision to take action or not take action in a specific case or in relation to an investigation into a death, then this would be dealt with under the COPFS Customer Feedback Policy.

The current Customer Feedback Policy which can be found at www.crownoffice.gov.uk/Publications/2010/10/Customer-Feedback-Policy-PDF has three potential stages for consideration by COPFS of a complaint. Our aim is to resolve any complaint as early as possible but if the person initiating the complaint remains unsatisfied with the COPFS response after stage 1 they can request that the circumstances are considered further by a more senior manager within COPFS. If they remain unsatisfied with the response at stage 2 they can request consideration at stage 3. All complaints that require to be considered at Stage 3 are dealt with personally by the Crown Agent.

If the complaint is about a prosecutorial decision, that will be reviewed afresh by a senior lawyer who did not make the initial prosecutorial decision at each stage.

After all 3 stages of the COPFS procedure have concluded if an individual remains dissatisfied with the decision to uphold or not uphold their complaint or the way in which their complaint has been handled, then they may raise the matter with the Scottish Public Services Ombudsmen (SPSO).

The SPSO will consider the way the complaint has been handled by COPFS and does not review prosecutorial decisions as these decisions are matters for the public prosecutor to make independently.

2. Clarification as to when the police will report a case to the Procurator Fiscal and who takes a decision on what action (if any) is appropriate.

In **all** cases the police only submit a Standard Police Report where they consider that there appears to be a sufficiency of evidence to prove that a crime has been committed. The process that would be followed if the Standard Police Report related to a present Law Officer is attached at Annex A.

The process that would be followed if a Standard Police Report related to a former Law Officer is attached at Annex B.

3. Confirmation if a Lord Advocate has required to recuse him/herself from consideration of any case involving a former Lord Advocate.

I am not aware of any Standard Police Report being received against any former Law Officers.

4. Confirmation of the processes in place for reporting and recording of cases where allegations of criminal behaviour have been made against individuals within the Crown Office, and in particular whether all cases where criminal allegations have been brought forward are kept on record, including unfounded ones.

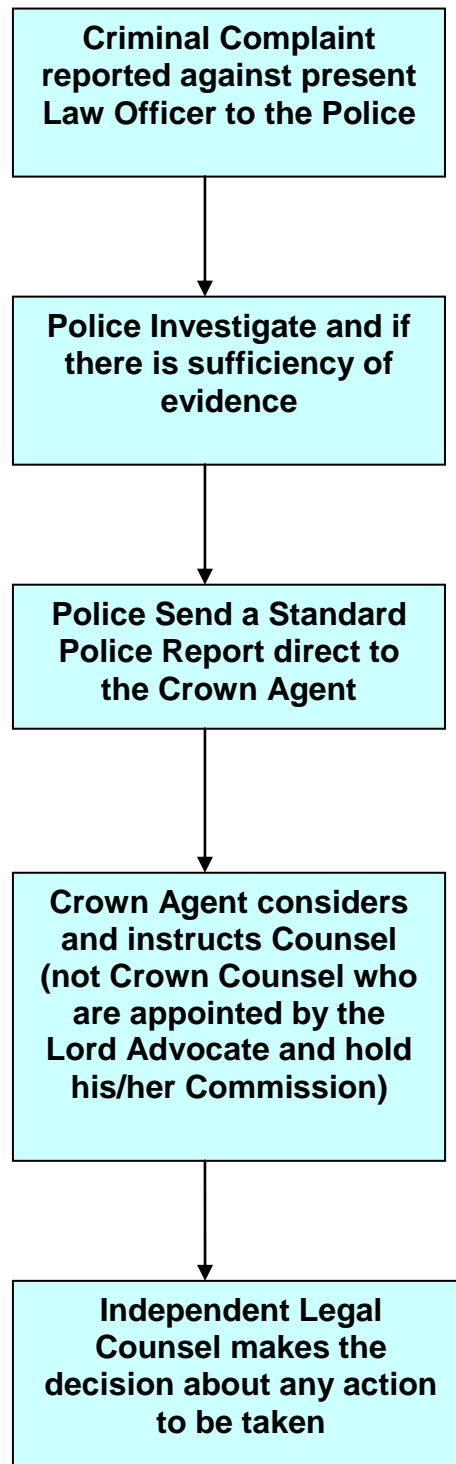
Where a Standard Police Report (SPR) is received containing allegations of criminal conduct by any individual who works within the COPFS (or of alleged criminal conduct by a family member or close associate of a person working within COPFS) then the process at Annex B is adopted.

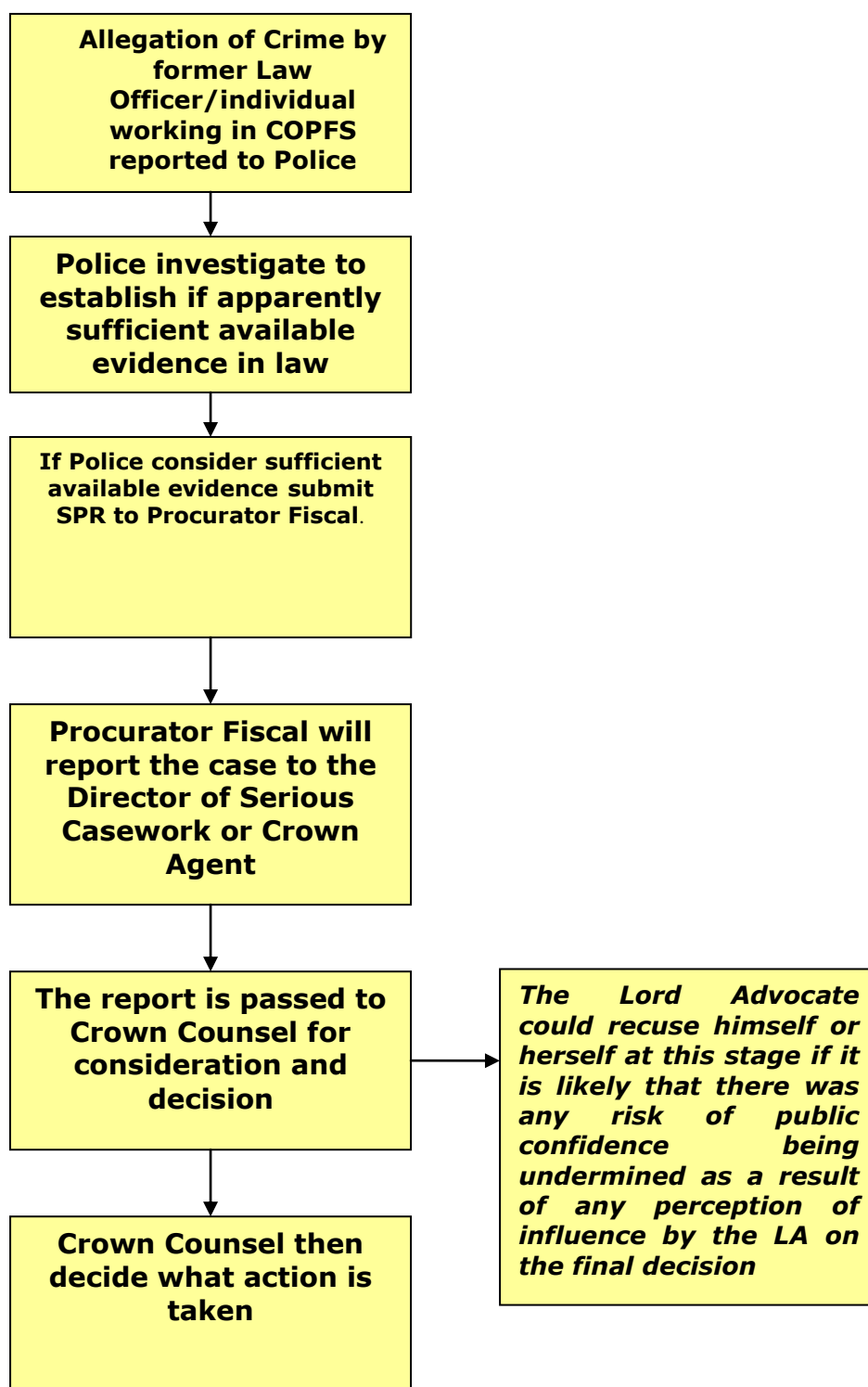
All SPR's have a unique reference number allocated on receipt by COPFS to allow an audit trail of submission by the police, receipt of the SPR by COPFS and the decision taken by COPFS regarding action or no action .

The information about decisions as to prosecutorial action in each case is also recorded on the police database and the Criminal History System (CHS) respectively. The Criminal History System (CHS) is a national database whose primary function is to record the criminal history records of individuals. CHS includes information on pending, ongoing and concluded criminal cases. It also records disposals such as direct measures offered by the Procurator Fiscal and records findings of guilt by the courts and details the sentences imposed.

I hope that this information is of assistance to the Committee.

Catherine Dyer
Crown Agent and Chief Executive
25 March 2013





NB – In some circumstances the identity of the accused may be anonymised to further bolster confidence that the identity of the alleged accused has not influenced the prosecutorial decision.

That may not always be possible, for example due to media reporting around the circumstances of any alleged offending behaviour. The Crown Agent or Director of

Serious Casework may also decide whether it would be more appropriate for Counsel who is not a member of Crown Counsel to be instructed to consider the case per Annex A.

This procedure is also adopted for any reports received against high profile celebrities or Members of Scottish or UK Parliament.