

REVIEW OF THE APPROACH TO SEXUAL OFFENCES BY CROWN OFFICE AND PROCURATOR FISCAL SERVICE (THE SEXUAL OFFENCES REVIEW)

TERMS OF REFERENCE

9 November 2022

- 1 The Lord Advocate has commissioned a full review of the approach to Sexual Offences by Crown Office and Procurator Fiscal Service (COPFS) (the Sexual Offences Review).
- 2 The Lord Advocate has commissioned Susanne Tanner KC to conduct the Sexual Offences Review. Susanne Tanner KC will be assisted by a core team of employees from COPFS who will work exclusively on the Sexual Offences Review, and such other internal or external assistance as may be required, in discussion with the Lord Advocate (together the Sexual Offences Review Team).
- 3 The Sexual Offences Review will consider how COPFS deals with the prosecution of sexual offences with a view to identifying best practice and making recommendations for improvement.
- 4 More particularly, the Sexual Offences Review will consider:
 - 4.1 Whether the way in which sexual offences are dealt with by COPFS protects the rights, and meets the needs and interests, of victims while protecting the rights of accused persons in criminal proceedings;
 - 4.2 Whether the National Sexual Crimes Unit (NSCU) should continue in its current format and, if not, what should take its place;
 - 4.3 Whether those employees of COPFS and Advocates Depute (independent High Court prosecutors) dealing with sexual offences case are suitably experienced, trained and supported with their workload allocation;
 - 4.4 Whether or not the systems and processes used in the investigation and prosecution of sexual offences, reflect best practice and are future-proofed;

- 4.5 Whether the current approach to securing and presenting victims' testimonies reflects best practice, and the impact on practice and processes of the increasing use of evidence by commission, joint investigative interviews (JIIs) and video recorded interviews (VRIs);
 - 4.6 Whether COPFS works as effectively as it can with Police Scotland in relation to the investigation and reporting of sexual offences and liaison with victims;
 - 4.7 Whether the timescales for the investigation and prosecution of sexual offences have an impact on the case and on the victims and accused;
 - 4.8 Whether reporting trends for sexual offences, and the COVID-19 pandemic, have had an impact on workloads and practices in relation to the prosecution of sexual offences;
 - 4.9 Whether there are any processes within the current scheduling and organisation of court business which impact on the approach to and handling of sexual offences cases by COPFS;
 - 4.10 Whether COPFS processes for handling cases are future-proofed to accommodate changes which are likely to be introduced in the next five years, including any non-legislative or legislative changes arising from the Lord Justice Clerk's Review on improving the management of sexual offence cases (the report in relation to which was published in March 2021) and the inspection by the Inspectorate of Prosecutions of the way in which COPFS deals with the provisions of sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 (the report in relation to which was published in October 2022).
- 5 The Sexual Offences Review will include:
- 5.1 A literature review, including identification of best practice and current developments in other jurisdictions;
 - 5.2 Consideration of the way COPFS investigates and prosecutes sexual offences;
 - 5.3 Consultation with prosecutors, COPFS staff, criminal justice partners and other relevant parties; and
 - 5.4 Inclusion of the views of victims and third sector support agencies.

- 6 The Lord Advocate has separately commissioned a modernisation programme for the COPFS Victim Information and Advice service (the VMP), which has started. The Sexual Offences Review Team will reflect the ongoing work of the VMP in its work.
- 7 The Sexual Offences Review Team shall keep confidential all confidential information disclosed to the Sexual Offences Review and shall not use or disclose the same, save as provided in its published data handling principles, or as required by law.
- 8 Susanne Tanner KC shall produce a written report on the Sexual Offences Review for the Lord Advocate, including findings and recommendations, by Autumn 2023 and a summary of the key findings and recommendations will be made public, subject to any relevant legal considerations.

Annex to Sexual Offences Review Terms of Reference

- 1 As part of its scope, the Sexual Offences Review will include consideration of: (i) COPFS systems and processes, including data collection; (ii) the interaction of COPFS with outside agencies, including the Police Service of Scotland (PSOS) and organisations supporting victims of sexual offences; (iii) cases that have been reported by PSOS to COPFS; (iv) the handling of individual cases by COPFS staff and independent office holders (Advocates Depute); and (v) the outcomes of individual cases.

- 2 The Sexual Offences Review may consider the details of relevant ongoing or completed sexual offences cases to inform its work, which the Sexual Offences Review Team has identified, or which have been brought to its attention by contributors to the Sexual Offences Review. While consideration of individual sexual offences cases may be informative to the Sexual Offences Review, it shall not be actively involved in the preparation of any ongoing cases, which shall remain the responsibility of the allocated COPFS employees and allocated Advocates Depute.

- 3 The Sexual Offences Review will not deal with:
 - 3.1 any requests for Victims' Rights to Review prosecutorial decisions not to raise proceedings or to stop or discontinue a case after a case has started (VRR). A COPFS process for VRR is already in place and is published on the [COPFS website](#). [Victim Support Scotland \(VSS\)](#) can offer help to victims in completing the form;

 - 3.2 individual complaints from anyone to COPFS. The COPFS complaints process is already in place and an '[easy-read](#)' guide is published on the COPFS website. However, in order to inform its work and in accordance with the scope of the Sexual Offences Review, it may consider complaints which have been made to COPFS, the content of said complaints and the way in which the complaints have been dealt with;

- 4 The Sexual Offences Review will not deal with the following matters for which there are existing COPFS policies and processes, details of which are available to COPFS employees:

- 4.1 Any individual grievance a COPFS employee may have in respect of their employment, which should be raised in accordance with the COPFS Grievance Policy;
 - 4.2 Any whistleblowing report from a COPFS worker, which should be raised internally (informally and/or formally), and/or externally, in terms of the COPFS Whistleblowing Policy; or
 - 4.3 any disciplinary process in relation to a COPFS employee or independent office holder (Advocates Depute), which should be dealt with in terms of the COPFS Disciplinary Policy or applicable policy for Advocates Depute, respectively.
- 5 A summary of the key findings and the recommendations of the Sexual Offences Review will be made public, subject to any relevant legal considerations.
 - 6 Personal data (as defined by s.3 of the Data Protection Act 2018) will not be included in any published summary of findings and recommendations without the express consent of the person in question.
 - 7 Contributors to the Sexual Offences Review are encouraged to provide information without seeking to do so on a confidential basis. This will help the Sexual Offences Review Team to reach fully informed conclusions by enabling them to put information and concerns raised by contributors to other persons, including COPFS employees, independent Advocates Depute, the Law Officers and external contributors, for their consideration and comment. Without such openness and transparency, the reliability of the information provided may be difficult to assess and the Sexual Offences Review Team's ability to further investigate and consider any issues raised in the context of the Sexual Offences Review may be restricted.
 - 8 Should a person who wishes to provide information to the Sexual Offences Review request confidentiality for their contribution, the Sexual Offences Review Team will proceed on a confidential basis but subject to the following limitations:
 - 8.1 Where the law otherwise requires disclosure, or a court or tribunal order requires disclosure;

- 8.2 Where the information disclosed reveals a potential criminal offence, in which case, if it becomes necessary to disclose to PSOS the identity of the person who has provided the information, this will be notified to that person in advance, except where it is exempt under law;
- 8.3 Where a person discloses information which relates to, or may give rise to, an internal COPFS disciplinary or professional standards and ethics investigation, in which case the Sexual Offences Review Team will seek the permission of the person who provided the relevant information to disclose both it and their identity through the appropriate COPFS channels in place at the time and the information provided will not be used without the person's permission, unless a court or tribunal orders disclosure; or
- 8.4 Where a person discloses information to the Sexual Offences Review which falls within the terms of the COPFS Whistleblowing Policy (which allows workers to raise concerns if, in the course of their work, they come across something that they think is wrong, illegal or endangers others within COPFS or the public (whether or not it is a 'qualifying disclosure' under Part IVA of the Employment Rights Act 1996)), in which case a member or members of the Sexual Offences Review Team may either suggest to the worker that they make a whistleblowing report through the appropriate method(s) under the COPFS Whistleblowing Policy and/or make a whistleblowing report and use all reasonable efforts to avoid disclosing the identity of any person who has requested anonymity, unless a court or tribunal orders disclosure.
- 9 Where personal data provided to the Sexual Offences Review Team by COPFS or any other person is covered by the COPFS Privacy Notice, that policy will continue to apply to the personal data.