COPFS published guidance and evidence of quality control weaknesses

Discussion paper | Rev1 | 3 November 2026

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afternotguilty.co.uk

Purpose and central finding

This paper examines selected COPFS public guidance against its own detailed publications, primary legislation and other official sources. The evidence supports a targeted review of legal accuracy, qualifications, consistency and document control. It does not establish the prevalence of errors across the whole website or the lawfulness of individual prosecutions.

The strongest new finding is that the COPFS privacy notice cites the Prosecution of Offences Act 1985 as a source of statutory powers, although the Act does not extend to Scotland. Other findings concern appeal guidance, data rights and explanations of alternatives to prosecution. [S1–S9]

Evidence standard

Confirmed discrepancy means the published statement conflicts with another identified source. Missing qualification means the statement is too broad or fails to explain an important exception. Interpretation identifies a question raised by the evidence, rather than a proven organisational motive or legal breach.

Sources were inspected on 3 November 2026. Web content can change. This is a selected, reproducible review, not a comprehensive legal audit. Source links and relevant locators appear at the end. The underlying case records and drafting history have not been examined.

Rewiring in practice means tracing a claim to its authority, correcting the defect, identifying why verification failed and independently checking that the remedy works.

Legal authority and data rights

E01 An inappropriate statutory reference

Evidence: Annex B of the COPFS privacy notice includes the Prosecution of Offences Act 1985 among legislation under which COPFS exercises powers. The Act expressly excludes Scotland. The CPS privacy notice contains a closely matching passage using the same statutory reference. [S1–S3]

Assessment: confirmed jurisdictional mismatch in the published explanation. Text adaptation from a common source is plausible, but the drafting history is unknown. This does not demonstrate that COPFS lacks other lawful authority or that its processing is unlawful.

Question: which Scottish powers should have been cited, who approved the reference and what other legal references were checked?

E02 A deadline distinction is missing

Evidence: COPFS data-rights guidance gives a normal one-month response period and says it will explain if more time is needed. ICO guidance states that Part 3 law-enforcement subject-access deadlines cannot be extended. [S4–S5]

Assessment: the general wording needs a regime-specific qualification. A notice of delay is not itself a lawful extension. This finding does not decide whether a particular request was subject to Part 3 or another regime.

E03 Blanket identity documentation

Evidence: COPFS asks SAR applicants for two types of ID. ICO guidance says formal ID should be necessary and proportionate; an established identity may require no further documents. [S4, S6]

Assessment: an unqualified requirement warrants explanation. Sensitive case information justifies careful verification, but does not establish that two documents are necessary in every case.

E04 Conflicting revision dates

The privacy notice displays 27 January 2026 at the top and 27 August 2024 within its text. This is a confirmed document-control inconsistency; the dates alone do not establish which passage was last checked. [S1]

Pleas appeals and legal outcomes

E05 Guilty plea appeal guidance is too absolute

COPFS parents and carers guidance says a guilty plea permits an appeal only against sentence. In Mackison v Procurator Fiscal Paisley [2025] HCJAC 45, convictions following guilty pleas were quashed after an SCCRC reference. The judgment discusses exceptional circumstances permitting withdrawal of a plea, including real error or misconception and clearly prejudicial circumstances. [S7–S8]

Assessment: a missing exception with potential consequences for access to advice. The finding does not imply unrestricted appeal rights after a guilty plea. Suggested correction: explain the ordinary position, identify exceptional routes and signpost independent legal advice.

E06 The wrong account of appeal jurisdiction

The COPFS criminal justice overview assigns all criminal appeal cases to the High Court. SCTS explains that the Sheriff Appeal Court hears summary criminal appeals against conviction and sentence, as well as bail appeals. [S9–S10]

Assessment: confirmed factual overstatement. Guidance should distinguish the ordinary routes and any onward or exceptional appeal routes.

E07 Responsibility and guilt are not explained consistently

The overview describes alternatives to prosecution as involving acceptance of responsibility for the crime. COPFS Disclosure Manual paragraph 19.5.3 distinguishes acceptance of a direct measure from acceptance of guilt. SCTS explains that fiscal fines can be deemed accepted through failure to reject an offer. [S9, S11–S12]

Assessment: an overgeneralisation requiring reconciliation. Responsibility and guilt are not identical concepts, and the different non-court measures should not be presented as having identical requirements or consequences. Acceptance is not necessarily an express admission.

E08 A correction has been reported and verified

COPFS told Simon Peers on 3 November that a typographical error in its parents and carers guide had been corrected. The live verdict section now identifies not guilty as acquittal and shows an update dated 2 November. [S13–S14]

The original email of 1 November described a reversal of the meaning of acquittal. Without a preserved original COPFS page in this evidence set, the exact former wording and duration remain unverified. The correction does not explain its publication or checking history.

Sentences and support after conviction

E09 Home detention curfew responsibilities are blurred

The COPFS glossary describes HDC suitability as assessed by the Parole Board. Scottish Government guidance identifies SPS as the decision-maker on behalf of Ministers, with a prior parole recommendation required for long-term prisoners. [S15–S16]

Assessment: the shorthand obscures distinct responsibilities and requires qualification. It should distinguish HDC assessment and release decisions from the Parole Board role in long-term cases.

E10 Community payback duration omits an exception

The glossary gives a six-month to three-year range. Community Justice Scotland identifies an exception for a standalone Level 1 unpaid-work requirement, normally completed within three months unless the court specifies longer. [S15, S17]

Assessment: incomplete explanation rather than proof that the general range is always wrong. The remedy is a qualification and a link to detailed requirements.

E11 Review signposting can create a false expectation

The after-verdict guide lists victims' right to review within its appeals section. The dedicated COPFS review page excludes court decisions, acquittals and accepted pleas. [S18–S19]

Assessment: potentially misleading placement, not an express statement that a victim can overturn an acquittal through the review scheme. The distinction between a prosecution decision and a court decision should be explicit at the point of signposting.

Findings excluded or held back

The general sheriff sentencing limits examined were supported by official material; they should not be listed as arithmetic or legal errors merely because further qualifications exist. Old guidance expressly dated to 2006 should be treated as historical content, with a question about signposting, rather than described as a newly written error.

Statements that a victim statement will be read in court may be ambiguous about reading aloud versus judicial consideration. A definitive legal-error finding requires additional checking of the applicable provisions and commencement dates. It is not included as a confirmed defect here.

What the evidence warrants

The findings concern different parts of the public journey: understanding an outcome, seeking an appeal, accepting a non-court measure, accessing personal data and understanding release arrangements. They justify asking COPFS to demonstrate how linked guidance is maintained and verified. They do not establish deliberate misinformation, bad faith or the cause of any individual case outcome.

The engineering response

Establish ownership

Assign a named role responsible for each guidance family and its review dates.

Trace authority

Map substantive statements to the applicable Scottish statute, judgment, policy or operational instruction.

Check connected material

When one error is found, inspect related pages, downloadable versions, forms and shared source text.

Record the remedy

Publish a dated correction note for substantive changes and retain the earlier version for audit.

Verify the outcome

Have a competent reviewer independent of the original edit check both the corrected statement and its links.

Test recurrence

Use scheduled reviews and change triggers to establish whether the same failure occurs elsewhere.

Questions for discussion

Who verifies jurisdiction and legal references? Which pages lack an identified owner? How are legal changes propagated across public and professional guidance? What records show that corrective action has been completed and checked? How can affected people submit new evidence without it being treated automatically as a request to reopen a concluded case?

The related numerical review should remain a separate evidence strand. A guidance defect, a measurement limitation and an arithmetic error require different remedies. Combining them into an undifferentiated count would weaken the case.

Source register

All public sources accessed 3 November 2026. Links identify the relevant pages; section locators support repeat checking. Private correspondence is identified separately and is not reproduced in full.

S1 COPFS Privacy notice — Annex B, data rights and revision dates

S2 Prosecution of Offences Act 1985 — territorial extent provision

S3 CPS Privacy notice — Annex B statutory purposes

S4 COPFS Your personal data and rights — ID and response periods

S5 ICO Part 3 right of access — response deadline

S6 ICO Responding to a request — Can we ask for ID

S7 COPFS After the verdict for parents and carers — Appeals

S8 Mackison [2025] HCJAC 45 — paragraphs 30 to 33

S9 COPFS Scotland's criminal justice system — alternatives and courts

S10 SCTS Sheriff Appeal Court Criminal — jurisdiction

S11 COPFS Disclosure Manual — paragraph 19.5.3

S12 SCTS Fiscal fines — acceptance and rejection

Source register continued

S13 COPFS Attending court for parents and carers — verdicts

S15 COPFS Words and meanings — HDC and community payback

S16 Scottish Government Home detention curfew — responsibilities

S17 Community Justice Scotland CPO report 2024 to 2025 — definition

S18 COPFS After the verdict for victims and witnesses — Appeals

S19 COPFS Victims' Right to Review — exclusions

S14 Private correspondence

Simon Peers to the Lord Advocate, 1 November 2026 at 09:10, subject Urgent concern inaccurate COPFS guidance on acquittal and the presumption of innocence. Reply from Mairi Boyle, Legal Assistant to the Crown Agent, 3 November 2026 at 09:26:59. The reply confirms correction and states a refusal to engage on governance and prosecutorial decision-making. The original message and reply were read for this paper.

This correspondence supplies the history of the concern. It is not a substitute for an independently preserved copy of the earlier webpage.

Evidence limitations and next revision

Preserve dated copies of relevant pages before external circulation. Seek a COPFS response to each numbered finding, including its authority and corrective action. Recheck each source before quoting it in a formal submission. No adverse inference about an individual member of staff is made.