



HM Inspectorate  
of Prosecution in Scotland

# The prosecution of domestic abuse cases at sheriff summary level

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Terms of Reference

May 2023

# About our inspection

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## Aim

1. The aim of this inspection is to assess how well the Crown Office and Procurator Fiscal Service (COPFS) manages and prosecutes cases involving domestic abuse at sheriff summary level.

## Context

### Definition of domestic abuse

2. In a joint protocol that sets out how they will investigate, report and prosecute allegations of domestic abuse, COPFS and Police Scotland define domestic abuse as:  
'Any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct and which takes place within the context of a relationship. The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere including online.'<sup>1</sup>
3. The joint protocol notes that, as a form of gender-based violence, domestic abuse is predominantly perpetrated by men against women. However, the definition is intended to acknowledge and include 'abuse of male victims by female perpetrators and includes abuse of lesbian, gay, bisexual, transgender and intersex people within relationships.'
4. The joint protocol also notes that its definition of domestic abuse, 'encompasses the entire spectrum of behaviour by perpetrators where this amounts to criminal conduct. This includes cases which involve isolated incidents as well as cases involving a course of conduct and includes both violent and non-violent abusive behaviour. Some cases will involve elements and tactics of coercive control, which can involve a range of behaviours designed to control and harm a victim, while others will involve isolated incidents of conflict provoked by situational factors.'

### Data on domestic abuse

5. Domestic abuse remains prevalent within our society. The most recent Scottish Crime and Justice Survey found that 16.5% of adults said they had experienced at least one incident of partner abuse since the age of 16.<sup>2</sup> Of the survey respondents who had a partner or contact with an ex-partner in the 12 months prior to being interviewed, 3.2% experienced at least one incident of partner abuse during that time (31% of whom had experienced more than one incident).

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<sup>1</sup> [Joint protocol between Police Scotland and COPFS – In partnership challenging domestic abuse](#) (2019).

<sup>2</sup> SCJS, [Scottish Crime and Justice Survey 2019/20: Main findings](#) (2021). The Scottish Crime and Justice Survey (SCJS) is a large-scale social survey run by the Scottish Government which asks people about their experience and perception of crime.

6. Of those who experienced partner abuse in the 12 months prior to interview:
  - 74% reported psychological effects, such as low self-esteem, depression and anxiety/panic attacks
  - 34% reported physical effects such as bruising
  - 32% reported that children were living in their household when the most recent incident took place, of whom 71% said that the children were present during the incident.
7. Only 11% of respondents who experienced partner abuse in the 12 months prior to interview reported the incident to the police, while 16% said the police came to know about the incident (for example, via neighbours and relatives as well as the respondent themselves). These findings demonstrate that most incidents of domestic abuse go unreported to the police.
8. In 2021-22, the police recorded 64,807 incidents of domestic abuse, a decrease of 1% compared to the previous year.<sup>3</sup> This was the first year the number of domestic abuse incidents had decreased since 2015-16. Of those incidents recorded by the police, 39% resulted in the recording of at least one crime or offence (some incidents will result in multiple crimes or offences being recorded). Where information on gender was recorded by the police, 81% of domestic abuse incidents involved a female victim and a male suspect; 15% involved a male victim and female suspect; and 4% involved a victim and suspect of the same gender.
9. Also in 2021-22, the police reported 32,776 charges with a domestic abuse identifier to COPFS, a decrease of 1.9% compared to the previous year.<sup>4</sup> On receipt of a police report, COPFS may decide to initiate court proceedings, issue a direct measure (such as a warning or diversion from prosecution) or take no action. The vast majority of charges reported with a domestic abuse identifier are prosecuted (93% in 2021-22, up from 92% the previous year). The proportion of charges that result in no action being taken has decreased in recent years, falling to 3% in 2021-22. The most common reason for taking no action was that there was insufficient admissible evidence.
10. Of the charges that were prosecuted, 77% were prosecuted at sheriff summary level. This proportion has fallen in recent years, with 23% of charges with a domestic abuse identifier being prosecuted at solemn level in 2021-22, up from 10% in 2013-14.
11. The most common types of offences reported in 2021-22 with a domestic abuse identifier were threatening and abusive behaviour (28%), common assault (25%) and crimes against public justice, which includes bail offences (23%). The majority of those accused of domestic abuse were male (87%).

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<sup>3</sup> Scottish Government, [Domestic abuse recorded by the police in Scotland, 2021-22](#) (November 2022).

<sup>4</sup> COPFS, [Domestic abuse and stalking charges in Scotland 2021-22](#) (September 2022).

12. The latest data published by the Scottish Courts and Tribunals Service (SCTS) show that in Quarter 3 of 2022-23:

- 23% of the total summary complaints registered in the sheriff court were domestic abuse cases
- domestic abuse cases account for 27% of sheriff summary trials called and 33% of sheriff summary trials in which evidence was led.<sup>5</sup>

### Terminology

Various terms may be used to describe a person who has experienced domestic abuse. They are usually described as a ‘complainer’ during the criminal justice process, but may also be referred to as a ‘victim’ or ‘survivor’. In this Terms of Reference, we have used the term ‘victim’ for ease and consistency.

### Policy context

13. In 2014, the Scottish Government published ‘Equally Safe’, a strategy for preventing and eradicating violence – including domestic abuse – against women and girls. Updated in 2018, the strategy prioritises early and effective interventions to prevent violence and maximise the safety of women and children, and ensuring perpetrators of violence receive a robust and effective justice response.<sup>6</sup>

14. More recently, in 2022, the Scottish Government published its ‘Vision for Justice in Scotland’. This includes several priorities relevant to addressing domestic abuse, including that justice services be person-centred and trauma-informed, that women and children be better served by the justice system, and that delays in the justice process reduce.<sup>7</sup>

15. These national priorities are reflected in COPFS’s Strategic Plan 2023-27, in which COPFS notes that it anticipates cases involving violence against women and children, sexual crime and domestic abuse will form the bulk of its casework for years to come. In its strategic plan, COPFS states that it will transform the way domestic abuse is prosecuted and sets out three transformation priorities for the years ahead: improving the experiences of women and children within the justice system; improving communication and the support offered to the most vulnerable service users; and achieving quicker conclusions to criminal investigations.<sup>8</sup>

### Recent legislative developments

16. Depending on the nature of the abuse and the circumstances in which it takes place, domestic abuse may be prosecuted as many different crimes at common law or as statutory offences. As noted at paragraph 11, the most common type of domestic abuse incidents reported to COPFS in 2021-22 were those relating to

<sup>5</sup> SCTS, [Quarterly Criminal Court Statistics – Bulletin 19 – Quarter 3 2022/23](#) (2023).

<sup>6</sup> Scottish Government, [Equally safe: Scotland’s strategy for preventing and eradicating violence against women and girls](#) (2018).

<sup>7</sup> Scottish Government, [The Vision for Justice in Scotland](#) (2022).

<sup>8</sup> COPFS, [Strategic Plan 2023-27](#).

threatening and abusive behaviour (contrary to section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010) and common assault.

17. The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 created a statutory aggravation of domestic abuse. This aggravation can be applied to any offence involving the abuse of a partner or ex-partner. Since its introduction in April 2017, prosecutors are able to establish the aggravation by proving that the accused either intended to cause or was reckless about causing physical or psychological harm to their partner or ex-partner. Where the aggravation is proved, the court must take it into account during sentencing and record that the conviction is one aggravated by abuse of a partner or ex-partner.
18. The Domestic Abuse (Scotland) Act 2018 was introduced to improve how the justice system responds to domestic abuse by ensuring that the criminal law reflects a 'modern understanding' of domestic abuse and reflects how victims actually experience such abuse.<sup>9</sup> Section 1(1) of the 2018 Act created a new offence of engaging in a course of behaviour that is abusive of the accused's partner or ex-partner. The abusive behaviour can include violent, threatening or intimidating behaviour, as well as psychological, emotional or financial abuse which were more difficult to prosecute under previously existing law. The 2018 Act also created a statutory aggravation intended to reflect the harm caused to children by domestic abuse. The aggravation can be applied to an offence under section 1(1) where the accused committed the offence in a way which involved a child.
19. The 2018 Act also introduced various reforms to criminal procedure, evidence and sentencing. These reforms apply to offences under the 2018 Act itself as well as other offences subject to the domestic abuse aggravation. They include, for example, a requirement that, on conviction, a court consider and make a non-harassment order for the victim and any children unless satisfied that this is not appropriate or necessary for their protection.
20. While section 1(1) of the Domestic Abuse (Scotland) Act 2018 is now a useful tool for prosecutors when responding to domestic abuse, it will not be appropriate for all such offending. Previously existing common law and statutory offences will continue to be used depending on the facts and circumstances of each case.

### **Prosecution policy**

21. Tackling domestic abuse is a priority for COPFS. In its joint protocol with Police Scotland on challenging domestic abuse, the two organisations outline the procedures to be followed in the investigation, reporting and prosecution of domestic abuse allegations. The protocol also sets out the standards of service which victims of domestic abuse can expect from the police and COPFS. Prosecution policy is set out in more detail in a dedicated chapter of the COPFS

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<sup>9</sup> [Domestic Abuse \(Scotland\) Bill: Policy Memorandum](#) (2017) at paragraphs 3, 5 and 18.

manual on victims and witnesses, and in case marking instructions specific to the offences alleged.

22. It is prosecution policy that there is a presumption in favour of prosecution in all cases of domestic abuse where a sufficiency of evidence exists. This includes cases where no evidence is to be led from the victim and cases where the victim may require additional support to enable them to engage with the criminal justice process.<sup>10</sup>
23. In cases involving violence or the threat of violence, there is a further presumption that proceedings will be taken in the Sheriff Court or High Court. In cases which do not involve violence or the threat of violence, proceedings may be taken in the Justice of the Peace Court. In exceptional circumstances and subject to additional COPFS guidance and policies, the presumption in favour of prosecution may be rebutted and alternative action taken, such as diversion from prosecution, a warning letter or a personal warning.

## **Our inspection**

24. In late 2022, when reviewing our future work programme, HM Chief Inspector of Prosecution raised the possibility of an inspection of domestic abuse with the Law Officers. While issues relating to domestic abuse had arisen in various inspections over the years, no thematic assessment of the management of domestic abuse cases had previously been carried out by the inspectorate. Following discussions, it was agreed that such an inspection would be timely, not least because of the relatively recent implementation of the Domestic Abuse (Scotland) Act 2018, but also in light of the commencement of the Summary Case Management Pilot in September 2022 and its focus on domestic abuse cases. Noting that an inspection of domestic abuse would bring further welcome scrutiny of cases involving predominantly female victims, the Lord Advocate formally referred the matter to HM Chief Inspector for inspection under section 79(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

### **The Summary Case Management Pilot**

The pilot introduces a new approach to managing cases at summary level with the aim of reducing the number of cases that are set down for trial unnecessarily and reducing the volume of late pleas of guilty and late decisions on discontinuation, thereby reducing the adverse impact on victims and other witnesses. A key feature of the new approach is the early disclosure of key evidential material and early judicial case management.<sup>11</sup> The pilot commenced in Dundee, Paisley and Hamilton on 5 September 2022, and is expected to run for 18 months.

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<sup>10</sup> COPFS, [Statement of prosecution policy](#) (2022).

<sup>11</sup> Further information about the pilot is available in SCTS, [The Summary Case Management Pilot – The transition from EPR and way forward](#) (August 2022).

## Scope

25. Our inspection will examine how COPFS manages and prosecutes cases involving domestic abuse. Given the breadth of domestic abuse as a topic, we have agreed with the Lord Advocate that we will focus our scrutiny on cases at sheriff summary level where the majority of cases involving domestic abuse are prosecuted. Indeed, data published by SCTS indicates that 95% of domestic abuse cases were heard at sheriff summary level.<sup>12</sup> By narrowing our scope in this way, we will be able to focus our attention on the service provided by COPFS to the majority of domestic abuse victims.
26. We will consider COPFS's standard approach to preparing and prosecuting domestic abuse cases at the sheriff summary level. We will also assess and compare the bespoke arrangements for managing domestic abuse cases:
  - calling at the Glasgow Domestic Abuse Court, where dedicated resources are committed to improving the justice process
  - falling within the remit of the Summary Case Management Pilot, taking into account the focus on facilitating advanced disclosure, early resolution, enhanced victim engagement and an accelerated trial process. To manage our own resources and in light of the progress made in implementing the pilot in Dundee, it is likely we will focus our scrutiny on domestic abuses cases calling in that area in particular.
27. We will aim to identify the features and characteristics of each of the three approaches (standard, Glasgow, Dundee) that contribute to well-prepared, efficiently progressed cases that better meet the needs of victims.
28. Our inspection will examine how well COPFS is fulfilling its obligations and commitments to victims in domestic abuse cases. This will include how well COPFS keeps victims informed throughout the life of a case, how victims are engaged and involved in the justice process, and the extent to which COPFS takes steps to ensure victims are supported and protected. We will also give special consideration to child witnesses in domestic abuse cases. This takes into account the growing recognition of the impact of domestic abuse on children, and the recent introduction of the statutory aggravation intended to reflect the harm caused to children by domestic abuse.
29. The key inspection questions we will seek to answer are:
  - 1) How well does COPFS support its staff to prepare, manage and prosecute domestic abuse cases at sheriff summary level?
  - 2) How well does COPFS prepare, manage and prosecute domestic abuse cases at sheriff summary level? This will include consideration of issues such as

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<sup>12</sup> SCTS, [Scottish Courts and Tribunals Service, Quarterly Criminal Court Statistics – Bulletin 19 – Quarter 3 2022/23](#) (2023).

prosecutorial decision making, plea adjustment, and how COPFS manages cases in which there are counter allegations or in which the victim is reluctant to engage with the justice process or requires additional support to do so.

- 3) How efficiently are cases progressed by COPFS?
- 4) How well does COPFS support and protect, and communicate and engage with victims and child witnesses? To what extent is COPFS delivering a person-centred and trauma-informed service?
- 5) To what extent does COPFS use quality assurance and other feedback mechanisms (such as feedback from victims or support organisations) to improve its approach to domestic abuse cases?
- 6) How well does COPFS work with partner agencies at both a strategic and operational level to progress cases efficiently and to improve the experience of victims and child witnesses?
- 7) How well are domestic abuse cases managed by COPFS in line with bespoke local arrangements, including cases falling within the Glasgow Domestic Abuse Court and the Summary Case Management Pilot? What are the key features and characteristics of these local arrangements that contribute to well-prepared, efficiently progressed cases that better meet the needs of victims?

30. In carrying out our inspection, as in all of our scrutiny activity, we will consider our Inspection Framework. The framework provides a structure within which we ensure a consistent and professional approach to our work. Based on the European Foundation for Quality Management (EFQM) Excellence Model, the framework considers themes such as the outcomes being achieved, leadership and governance, processes, people, resources and collaborative work.

## **Methodology**

31. Following an initial period of scoping and planning our inspection, which includes engagement with COPFS and key stakeholders such as sheriffs, Scottish Women's Aid and Assist, we will seek evidence from a range of sources. This will include:
- reviewing COPFS strategies, policies, guidance, procedures and other documentation relating to the management and prosecution of cases involving domestic abuse
  - analysing available data on the prosecution of domestic abuse cases
  - reviewing a sample of cases managed and prosecuted under the standard, Glasgow and Dundee approaches
  - observing court proceedings
  - seeking the views and experiences of victims and child witnesses in domestic abuse cases by engaging directly with them and with the organisations which support them and advocate on their behalf



- interviewing key personnel within COPFS who are involved in preparing, managing and prosecuting domestic abuse cases at sheriff summary level
- interviewing stakeholders such as defence agents, sheriffs, court officials and other interested parties.

32. In carrying out our inspection, particularly in the planning and evidence gathering stages, we will consider our duty of user focus, as set out in the Public Services Reform (Scotland) Act 2020. This will help us ensure that the views and experiences of service users, and those who represent them, inform our work. In reflecting the views and experiences of victims and child witnesses in our inspection, as well as seeking to engage with them directly, we will draw on relevant recent research.<sup>13</sup>

## Reporting

33. A report of our inspection will be submitted to the Lord Advocate in accordance with section 79(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The report will also be published on our website at [www.prosecutioninspectorate.scot](http://www.prosecutioninspectorate.scot). We anticipate publishing our report later in 2023.

34. For further information about our inspection, or if you have information or experiences you would like to share with us, please contact us at [ips@gov.scot](mailto:ips@gov.scot).

Laura Paton  
 HM Chief Inspector of Prosecution in Scotland  
 May 2023

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<sup>13</sup> Such as N Lombard & K Proctor, [Women's lived experiences of coercive control, stalking and related crimes, as they progress through the justice system](#) (March 2023); Houghton et al, [Domestic abuse court experiences research: the perspectives of victims and witnesses in Scotland](#) (2023); Scottish Government, [The Domestic Abuse \(Scotland\) Act 2018: emerging findings of male victims' experiences of the criminal justice system](#) (2023); and N Lombard, K Proctor & N Whiting, [Domestic Abuse \(Scotland\) Act 2018 and the criminal justice system – Women's experiences two years in; the emerging findings](#) (2022).



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### **About HM Inspectorate of Prosecution in Scotland**

HM Inspectorate of Prosecution in Scotland (IPS) is led by HM Chief Inspector of Prosecution who is appointed by the Lord Advocate to inspect the operation of the Crown Office and Procurator Fiscal Service (COPFS). The functions of HM Chief Inspector are set out in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The 2007 Act makes clear that in the exercise of any of the functions conferred by the Act, HM Chief Inspector is independent of any other person. COPFS is the sole prosecuting authority in Scotland and is also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

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