



annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2014-2015



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SCOTTISH GOVERNMENT

annualreport

INSPECTORATE OF PROSECUTION IN SCOTLAND 2014-2015

TO THE RIGHT HONOURABLE
FRANK MULHOLLAND QC
THE LORD ADVOCATE

THE TENTH ANNUAL REPORT
TO THE SCOTTISH PARLIAMENT

AUGUST 2015

MICHELLE MACLEOD
HM CHIEF INSPECTOR
INSPECTORATE OF PROSECUTION
IN SCOTLAND

LAI D BEFORE THE SCOTTISH
PARLIAMENT BY THE LORD
ADVOCATE in pursuance of s79(8)
of the Criminal Proceedings etc.
(Reform) (Scotland) Act 2007

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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

APS Group Scotland
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FOREWORD

In times of budgetary constraint and rising public expectations, identifying opportunities for efficiencies and service improvement and promoting public confidence in the quality of public services is increasingly important. Inspectorates have a pivotal role in facilitating and driving forward improvement agendas.



The main impact of the work of the Inspectorate of Prosecution in Scotland (the Inspectorate) is through publication of our findings and recommendations. In making recommendations, I aim to identify areas of best practice in the Crown Office and Procurator Fiscal Service (COPFS) as well as areas where improvements can be achieved. I am aware of the burden of inspection and the need to focus on priority areas that will achieve the maximum impact, without adding unnecessarily to the already onerous burdens of COPFS.

I also consider that a system of monitoring and follow-up of the implementation of recommendations is critical, to ensure that maximum value is obtained from inspection. Under my direction, the Inspectorate has embarked on a programme of follow-up work to monitor the progress of COPFS implementation of our recommendations and to evaluate the effectiveness and outcomes of measures implemented.

During 2014/15, the Inspectorate published follow-up reports on Organ Retention, the Health and Safety Division, the Knowledge Bank, the International Co-operation Unit and Community Engagement.

Going forward, follow-up reports will form part of the inspection cycle, with the Inspectorate taking a risk-based approach to the level of further inspection required.

In May 2015, I attended the Five Nations Heads of Inspectorates Forum in Belfast. The forum provides an opportunity to share best practice, new approaches and ideas about improving the impact and effectiveness of inspection, audit and scrutiny. The theme of the forum was inspecting and regulating in austerity. There was consensus that, to minimise the impact of inspection on organisations, inspectorates should ensure that there is no duplication of inspection, encourage collaborative working and that the

resources required by organisations to comply and co-operate with inspections were not disproportionate. The ability to measure the impact of value added from inspections was emphasised, recognising that it is important for inspectorates to move into an evidence-based environment in the same way as is demanded from the organisations that they inspect.

Assessing the impact of inspection is challenging due to the difficulty in establishing causal links between inspection recommendations and subsequent improvements in performance, particularly in relation to more nebulous concepts such as cultural change. Despite such difficulties, it is necessary to assess the impact of our reports and recommendations whether in tangible outcomes or through feedback from COPFS and other stakeholders.

The follow-up report on organ retention is an example where outcomes can be quantified. The inspection highlighted the medical advances which significantly reduced the need to retain whole organs and emphasised that retention should only be required in exceptional cases, prompting a cultural change in the approach to the retention of organs.

The primary objective of the organ retention inspection was to ensure that there was a comprehensive and robust system to notify nearest relatives if an organ was retained and to keep them updated. All of the recommendations of the organ retention report were accepted and with the exception of provisions to be incorporated into the pathology providers' contracts, which will be addressed during future contractual negotiation, all have been implemented. The follow-up report and subsequent audits found that, since the publication of the organ retention report, there had been only one instance where temporary retention had been necessary. In that case, there was appropriate and timely notification. No organs have been retained indefinitely since the publication of the report.

It is such outcomes that we seek to identify at the outset of an inspection and to subsequently assess in the follow-up process.

Michelle Macleod.

Michelle Macleod
HM Chief Inspector
August 2015

CHAPTER 1 – ABOUT US

The Inspectorate of Prosecution in Scotland was established in 2003 and placed on a statutory footing in 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The Act requires the Inspector to secure the inspection of the operation of COPFS and to submit to the Lord Advocate a report on any particular matter connected with the operation of the Service which the Lord Advocate refers to the Inspector.

Vision

The Inspectorate's vision is to enhance the effectiveness of and to promote excellence in the prosecution service in Scotland through professional and independent inspection and evaluation.

Values

The core values of the Inspectorate are:

Independence – to provide impartial and objective advice and support.

Professionalism – to undertake inspections with integrity, rigour, competency and consistency.

Equalities

The Inspectorate is committed to promoting equality and diversity. To this end we consider any impact our inspections and recommendations may have on individuals, groups and communities. In particular, we carry out Equality Impact Assessments, focusing on the potential impact of our work on those with protected characteristics.¹ The Inspectorate attends the Equality Advisory Group (EAG) as an observer. The EAG was established in 2003 and consists of COPFS staff and external members with a remit “to provide independent and informed advice to COPFS in relation to the impact of existing and future policies and practices on diversity and the promotion of equality and fairness in service delivery and employment”.

¹ As defined in the Equalities Act 2010.

Our approach

Our approach to inspection is to encourage an inclusive and participative process designed to secure improvement across the system, acting as an impartial and professional 'critical friend'. In addition to identifying areas for improvement, it is important to highlight and promote examples of good practice, so that they can be adopted elsewhere.

It is important that the work of the Inspectorate is relevant to the issues impacting on our communities. In selecting topics for inspection, the Inspectorate adopts an objective risk-based approach, informed by consultation with our stakeholders.

There are a number of different types of inspection work that can be undertaken by the Inspectorate. These include:

Thematic reviews

We will continue to use thematic reviews to scrutinise areas of work that benefit from a holistic approach. These can be focused on specific types of case work or business approaches. We will highlight good practice and make recommendations designed to drive improvement and enhance quality.

Follow-up reviews

A robust follow-up process is a critical part of an effective inspection regime. I have introduced a rolling programme of follow-up reports to monitor the progress made by COPFS in implementing our recommendations.

Federation/Functional inspections

With the COPFS Federation structure now embedded, we will review the effectiveness and efficiency of functional working across the Federations.

Collaborative reviews

Given the close association between the police and COPFS, I regularly meet with HM Inspectorate of Constabulary for Scotland to consider areas where joint inspection of cross-cutting issues would be of benefit. The Inspectorate also liaises with Audit Scotland and the other inspection bodies within the criminal justice system to ensure there is no duplication of work and that inspection work is undertaken in a collaborative and complementary way.

CHAPTER 2 – OUR INSPECTIONS

This report covers the period from the end of July 2014 to July 2015. During this period we published our thematic report on time limits and five follow-up reports on Organ Retention, Community Engagement, the International Co-operation Unit, the Knowledge Bank and the Health and Safety Division.

We are currently working on a thematic report on the handling of complaints and a review of Fatal Accident Inquiries.

Thematic Report on the Management of Time Limits

A thematic report on COPFS management of time limits in solemn cases was published in February 2015 (<http://www.gov.scot/Publications/2015/02/1907>).

Scotland has one of the tightest time limit regimes among comparable jurisdictions. Any failure to comply with statutory time limits resulting in a case not proceeding is likely to undermine public confidence in COPFS and, potentially, in the criminal justice system as a whole.

We found there was a strong cultural awareness within COPFS of the importance of ensuring that solemn cases are progressed and prosecuted within statutory time limits. However, whilst COPFS has a strong track record of compliance with statutory time limits, the combination of an increasing volume of serious cases, the changing profile of serious offending including a substantial increase in the reports of sexual crime and an increase in multiple accused prosecutions as well as the greater complexity of such cases, all in the context of reducing budgets, has impacted on its ability to progress High Court cases expeditiously. This increases the risk that cases may be lost if time limits are not managed effectively.

We found that there was a lack of coherence in the systems for managing time limits, resulting in unnecessary duplication of work at different stages of the progress of a case. We made 13 recommendations designed to provide assurance that the systems employed by COPFS to ensure compliance with time limits are effective, comprehensive and robust.

Update

We are pleased to report that COPFS accepted all of our recommendations. The Inspectorate will undertake a follow-up inspection in 2016 to monitor the implementation and assess the impact of our recommendations.

Follow-up Report on Organ Retention

A follow-up report to the thematic report on Organ Retention² was published in March 2015 (<http://www.gov.scot/Publications/2015/03/8208>). The thematic report found that the public's attitude to death and, in particular, the care of the body after death, has evolved, reflecting cultural diversity as well as an expectation of being involved and consulted on all important decisions regarding their relatives. It also raised awareness of the impact of medical advances which have significantly reduced the need to retain whole organs for diagnostic purposes and highlighted that the overriding aim is to complete any necessary organ examination before releasing a deceased's body to relatives.

The report made 10 recommendations designed to provide assurance that procedures implemented by COPFS were professional, effective and sensitive and that there were sufficient safeguards to prevent any further instances of nearest relatives not being informed of organ retention following a post mortem authorised by the Procurator Fiscal.

The Inspectorate undertook to conduct audits to test procedures governing organ retention both 6 and 12 months after the publication of the initial report.

The follow-up report, covering the period from July 2014 to end January 2015, found that there had been substantial progress in the implementation of all of the recommendations. The Inspectorate conducted an independent audit of organs retained by pathology service providers during that period and compared them with the parallel records held by the Scottish Fatalities Investigation Unit (SFIU) on their organ retention database. We found that records were consistent and that all recording and notification procedures had been followed. Only one organ had been temporarily retained during the period.

A subsequent audit, covering the period from February 2015 to end July 2015 found that no organs had been retained during that period.

The outcome of the follow-up report was extremely encouraging and reflected the consensus among pathology service providers that organ retention should only occur exceptionally.

² Published in July 2014.

Follow-up Report on Health and Safety Division (HSD)

A follow-up report to the thematic report on Health and Safety Division³ was published in August 2015 (<http://www.gov.scot/Publications/2015/08/9101>).

The thematic report made 38 recommendations designed to improve the efficiency of HSD and the age profile of health and safety cases.

The follow-up report commented favourably on the introduction of electronic reporting, improved working relationships between HSD and specialist reporting agencies, investment in a wide-ranging training programme and early triaging of cases which have enhanced the effectiveness of HSD and increased the throughput of cases.

We highlighted continuing difficulties with obtaining accurate and reliable management information on HSD caseload and made two new recommendations intended to improve the quality of data held by HSD and support the prioritisation of cases.

Follow-up report on the Knowledge Bank

The follow-up report on the thematic report on the Knowledge Bank⁴ was published in August 2015 (<http://www.gov.scot/Publications/2015/08/3023>). The thematic report made six recommendations designed to improve the Knowledge Bank and enhance its ability to become a one stop shop for guidance, policy and practical advice.

The follow-up report acknowledged that all recommendations had been implemented and that the introduction of an upgraded internet has significantly strengthened the flexibility of Knowledge Bank and facilitated the provision of materials in a wide range of formats, including online DVDs and e-learning modules. Moving forward, responding to feedback via the interactive online facility should ensure that the Knowledge Bank remains a relevant, comprehensive and credible source of information.

³ Published in April 2013.

⁴ Published in December 2013.

Follow-up report on the International Co-operation Unit

The follow-up report on the thematic report on the International Co-operation Unit (ICU)⁵ was published in August 2015 (<http://www.gov.scot/Publications/2015/08/2623>).

ICU functions as a central authority in Scotland for all aspects of international criminal co-operation. The thematic review of ICU made 11 recommendations designed to strengthen the reputation of ICU, improve procedures relating to obtaining and reviewing European and international arrest warrants and introduce more accurate monitoring systems to measure key performance indicators.

We welcomed action taken by ICU to improve and clarify their working relationship with COPFS Federations, to introduce more rigour to the procedures for obtaining, monitoring and reviewing international and European arrest warrants, and to consolidate their credibility and highly regarded reputation in international circles.

We highlighted that our ability to assess the effectiveness of the progression and management of cases by ICU is constrained due to continuing difficulties with obtaining accurate and reliable information on ICU caseload and urge ICU to address the deficiencies of the existing system as a priority.

Follow-up report on Community Engagement

The follow-up report on the thematic report on Community Engagement⁶ was published in August 2015 (<http://www.gov.scot/Publications/2015/08/9205>).

As the sole prosecutor of crime in Scotland, it is imperative that COPFS is seen to be representative of and responsive towards the diverse needs of all protected groups in Scotland.

The thematic report made 14 recommendations designed to improve the recording and outcomes of engagement activities and make more use of media and social networking to engage with communities.

To ensure compliance with duties imposed by equalities legislation and incorporate community engagement into a more comprehensive equalities' strategy, COPFS established the Equality Act Implementation team in 2011, headed by an Equality Champion.

⁵ Published in March 2014.

⁶ Published in June 2011.

A framework of Equality networks and Equality Ambassadors, to represent all of the protected characteristics, was also established to mainstream equality and inclusiveness.

We found that COPFS has employed a strategic and creative approach to engaging with the public using various forms of communication including COPFS website, social media and the production of a number of informative and impactful DVDs highlighting the work of the prosecution service and tackling sensitive issues including anti-sectarianism, racism, homophobia and disability hate crime.

Moving forward, COPFS has a strong platform on which to consolidate existing relationships and explore new channels of engagement.

Current and Future Programme

- Thematic review on the handling of complaints.
- Review of Fatal Accident Inquiries.
- Follow-up report on Managing Time Limits.

The programme is kept under review and altered as necessary to respond to any new challenges or developments which provide identifiable risks for COPFS and the wider criminal justice system.

CHAPTER 3 – CONTINUOUS IMPROVEMENT

The primary responsibility for continuous improvement rests with COPFS. In last year's Annual Report, I reported that COPFS has adopted an objective, targeted and risk-based approach to learning and improving processes and systems. During 2014/15, a number of initiatives have been introduced by COPFS to enhance the overall quality of service. For example:

Case Review Group (CRG)

COPFS has recently set up a Case Review Group to look at cases where difficulties have arisen to ensure that relevant learning is identified and disseminated and any systematic issues are rectified.

The members of the CRG are senior officials who meet weekly with one of the Law Officers. Cases are referred for consideration in a number of ways, including via complaints, expressions of public concern, and judicial comment or by the relevant Operational Board.⁷ All cases referred to the CRG remain under scrutiny until concluded. The Group is in its infancy but its work has already led to changes of policy and practice, e.g. the appointment of a prosecutor at the High Court at Glasgow to assist and liaise with Advocate Deputes dealing with Preliminary Hearings.

Management Development Programme

COPFS has launched a new Management Development Programme (MDP) aimed at increasing the skill and confidence of its leaders and managers. The programme provides broad training in management principles, with a focus on various aspects of managing self, managing people and managing performance, but is also individually tailored to different management functions in COPFS. For example, the programme for managers dealing with Sheriff and Jury business includes operational skills workshops on the core management responsibilities for dealing with such business. The programme will be delivered, over a 13-month period, through a variety of learning tools including e-learning modules, workshops and action learning sets.

⁷ Boards that oversee the four core functions in each Federation – initial decision-making, Summary, High Court and Sheriff and Jury business.

Review of Specific Crimes

The ability of managers to access a database of cases containing particular crimes and any relevant documentation enables categories of crimes that have been identified as sensitive or problematic due to the nature of the offence, to be more easily monitored. Such an approach has been used to review various types of offending including domestic abuse and offences involving transgender victims and accused and elderly victims. More recently, this approach has been applied to stalking cases. COPFS has appointed a dedicated National lead for such cases, who is assisted by a number of Federation specialists. The specialists review stalking cases on an ongoing basis to identify, for example, any deficiencies in police reporting, non-compliance with prosecution policy or particular difficulties/sensitivities as well as best practice. A monthly report is produced which enables COPFS to provide constructive feedback to the police, address any failures to comply with prosecution guidelines and policy and provide feedback and learning to prosecutors. The review provides a substantial level of reassurance that such cases are dealt with appropriately.

Information Technology Applications

There are a number of other strands to the improvement portfolio being taken forward by the Strategy and Delivery Division in COPFS.

We received a demonstration from COPFS of front end applications designed to simplify and automate a number of existing processes. The implementation of such applications will reduce the potential for human error and provide access to relevant information to enable decisions to be taken on various aspects of a case including whether a witness can be excused or whether a plea is acceptable without obtaining hard copy papers or trawling through the COPFS case directory.

To maximise the use of digital technology, COPFS is about to roll out iPads in two model offices to use in court to test their functionality and applicability in a real time environment.

These initiatives, as part of an ongoing improvement agenda, are positive developments, although I reiterate the view expressed in last year's Annual Report that the Operational Boards, based on a risk assessment approach, should agree a set of key areas or processes to be monitored as part of their continuous improvement programme.

ANNEX A

Finance

The Inspectorate's budget for 2014-15 was £320,000.

The expenditure was as follows:

Staff costs*	237,188.71
Subsistence and motor mileage	422.41
Printing and binding	5,768.02
Travel and accommodation	3,733.88
Hospitality	68.39
Conference fees	1,136.86
Other running costs	10,607.47
Total	<u>£258,925.74</u>

*No member of staff earned in excess of £150,000

Staff and Accommodation

IPS consists of a small team (equivalent to four full-time members). The staff during the period of the report consisted of the Chief Inspector, a Principal Inspector, a Legal Inspector, a Business Inspector, a Personal Assistant and three Associate Inspectors on a fixed-term basis.

Freedom of Information (FOI)

We publish FOI information and all our reports on our website.

During the period to the end of July 2015, seven Freedom of Information requests were received – all were responded to within the required timescale.

Complaints Process

Our Complaints Handling Procedure is published on our website and seeks to resolve any dissatisfaction as quickly as possible and, where necessary, to conduct thorough, impartial and fair investigations of complaints. Our Complaints Handling Procedure does not extend to complaints on operational decisions relating to specific cases. These should be addressed to COPFS.

If you require this publication in an alternative format and/or language, please contact us to discuss your needs.



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