Inspectorate of Prosecution in Scotland

A Report on the Crown's Preparation of Summary Cases

Summary and Recommendations

August 2012

The Scottish Government

INSPECTORATE OF PROSECUTION IN SCOTLAND

A REPORT ON THE CROWN'S PREPARATION OF SUMMARY CASES

SUMMARY AND RECOMMENDATIONS

The purpose of the report

1. This is the report by Her Majesty's Chief Inspector of Prosecution in Scotland on the Crown's preparation of summary cases in the Sheriff Court in Scotland.

2. Cases taken at summary level can either be heard in the Sheriff Court before a sheriff sitting alone or in the Justice of the Peace Court before either a single Justice or a bench of two or more.

3. Of the total cases taken to court by the Crown Office and Procurator Fiscal Service (COPFS) approximately 60% are heard in the Sheriff Court where the sentencing powers of the sheriff include imprisonment up to one year.

4. The inspection focused on the quality and timeliness of Crown preparation and the extent to which unnecessary delays in progressing cases (referred to as 'churn') was attributable to action or inaction on the part of the prosecutor as opposed to other parties in the Criminal Justice System (CJS) such as the defence or police.

5. Although this was not a systems or process review it was necessary to examine processes to assess whether or not they were fit for purpose and what improvements might be made.

6. The COPFS has over a period of years introduced comprehensive IT systems for both legal and administrative staff to the extent that the bulk of the work by both legal and support staff is done online. A feature of this, however, is that more than one system is in use at any given time necessitating the switching of screens and moving between systems to complete tasks. A new system (Phoenix) had been planned to improve functionality but budget constraints have meant this has been shelved, at least for the time being. A paper based system is still used in court where prosecutors do not have access to the IT system. After a pilot a full electronic case record system was being introduced as we concluded our fieldwork.

Background and context

7. There have been concerns over a period of years about the efficiency of the CJS and growing unease over the question of 'churn' where cases stay in the system longer than necessary and take up more court time than otherwise would be the case.

8. The first statutory measure to improve case preparation was the creation of intermediate diets in 1980. These were an important area for our inspection.

9. The CJS is a complex one (the use of the word ‘system’ itself has been challenged) and consists of various parties who have to at least work together to make the system work. The mix includes parties who are all quite independent of each other and is an adversarial system which by definition can militate against the concept of co-operation. It includes both public and private staff interests with on occasion conflicting agendas.

10. We were aware of the Crown’s need to balance cost and efficiency on the one hand with the dictates of justice on the other, not least the accused’s right under the European Convention on Human Rights (ECHR) legislation to a fair trial.

11. In 2004 Sheriff Principal McInnes reported to Scottish Ministers with proposals for reform of the summary CJS. Many of these proposals found their way into the statute book and in 2007 Scottish Ministers published a paper called ‘Summary Justice Reform Model’ with the aim of expediting the disposal of cases and creating a system that would be in reality summary.

12. Criminal justice partners including COPFS, the Scottish Court Service, the police and others have been closely co-operating and giving effect to these aims with initiatives such as ‘Making Justice Work’. A feature of the criminal justice landscape is the amount of co-operative work that has been and is being undertaken. Many of these initiatives were ongoing at the time of our inspection.

13. In 2011 Audit Scotland published an ‘Overview of Scotland’s Criminal Justice System’ and concluded that there were significant inefficiencies in the CJS with many cases repeating processes through the courts. They estimated that such inefficiencies in processing cases cost the CJS at least £10 million in 2009-10. Repeated delays in processing cases could also they felt have a negative effect on people’s confidence in the system.

14. The CJS is subject to budget constraints in keeping with the wider public sector. It is essential, therefore, that the best use possible is made of existing resources and unnecessary waste or repetition avoided.

15. The Crown is the gateway to the CJS and its actions impinge on a wide range of other parties including the police, forensic scientists, defence lawyers, judges, witnesses/victims and many others. In its turn it has to depend on many of these parties playing their part in the efficient running of the system.

16. We concentrate in this report on those areas within the control of COPFS. During the inspection COPFS embarked on the biggest change in generations in the structure of the organisation. Scotland has a number of Sheriff Court districts and broadly speaking each of these had a District Procurator Fiscal. The District Procurator Fiscal had responsibility for all the work in his/her district and the districts were themselves grouped into 11 areas. These areas largely coincided with Scotland's police force boundaries. However, COPFS has now moved from these 11 areas to 3 Federations (partly as a result of the move to create a single Scottish police force) and work in these Federations can take place at various locations. Staff are now responsible for discrete areas of work rather than for a geographical area. The idea is that the work moves rather than the people and cost savings and efficiencies of scale are anticipated.

17. It remains to be seen whether this new structure aids or hinders the efficient disposal of the work. It will take time to bed in. The issues we have identified in this report will in any event apply irrespective of where and by whom the work is carried out.

Methodology

18. The Inspectorate takes an evidence based approach to its work. Eight offices of varying sizes were chosen as focus points of our case review. We examined a number of 'closed' or finished cases as well looking at the preparation of 'live' cases which we tracked and observed at intermediate diet courts. The opportunity was taken on these occasions to observe the whole court, speak to the presiding Sheriffs, the Sheriff Clerks and contact was also made with the defence, police and other parties.

19. On the national front contact was made with key COPFS personnel, the Scottish Police Services Authority (SPSA), criminal justice co-ordinators, senior Scottish Court Service personnel and others.

Summary of findings and recommendations

20. When cases are received from the police and other agencies they are 'marked' by a legal member of staff that is a decision is made as to how the case is to be dealt with. Summary justice reform has resulted in a wider range of non-court disposals (such as fiscal fines) and a raising of the threshold for action to be taken.

21. As a result cases which previously would have been heard in the High Court now proceed in the Sheriff and Jury courts and (of particular significance for this report) cases which would previously be heard in the Sheriff and Jury courts are now heard in the Sheriff Summary courts. Sentencing powers have been increased as a result.

22. Once a case has been ‘marked’ for proceedings in the Sheriff Summary court the Fiscal marking the case has a number of tasks to complete online. In an understandable effort to avoid double handling of cases a great deal of preparation is done at this stage to ‘front load’ the case for trial (just over 50% of such cases plead not guilty). It is at this point that the Fiscal needs to switch between screens and systems. One important task is to identify which witnesses will be required in the event of a trial.

23. These tasks are undertaken whether or not the accused has simply been ‘reported’ by the police or is appearing as a ‘custody’ or ‘undertaker’. In the last two situations time pressure in getting the case into court can be considerable. It is one of the ironies of the system that the most serious cases have the least time available for their consideration.

24. We found in general that most cases had these pre-trial instructions carried out and were on the whole adequate and ensured that the correct things and people were available for trial. We found some instances of good practice where the marking Fiscal had added helpful notes about the case and considered what further additional steps might be necessary.

25. We did find some over-citing of witnesses especially police witnesses which was also a finding of some internal COPFS audits. We also found some laudable local training to address this issue.

26. In addition to deciding which witnesses will be required for the trial the Fiscal has to consider what ‘productions’ are necessary (or desirable) to prove the charge. These may be objects such as knives or documents such as arrest forms or (especially in the wake of the **Cadder** case) the record of the accused’s access to a solicitor pre-police interview.

27. We found problems with productions both physical objects and documents. We found especially in the case of documentary productions that these were not being requested at this stage and could be missed further down the line potentially leading to ‘churn’. In some cases the police had yet to seize an item and this could be overlooked.

28. CCTV and forensic reports play an increasing role in summary criminal cases. These have the common feature that they require multi-stage processing to be available and used in court. One significant finding for this type of production was that while the necessary instruction was given at the first stage the follow up procedures were not always dealt with. For example ordering a forensic report is a necessary step but once received it needs to be served on the accused and action taken to execute this and obtain proof of the action.

29. Although CCTV was a growing element of cases it was apparent that pressure on Fiscals marking cases meant there was little opportunity to view these prior to the first appearance in court. We found varying practice among offices as to the lodging of CCTV evidence. Such evidence can be led by way of a statutory ‘certificate’ and we found (as with forensic reports) that the necessary follow up action was not always carried out or at least timeously.

30. Provision of CCTV evidence to the defence also proved problematic. In custody cases (in Glasgow for example the majority of summary cases begin as custodies) the defence would also be under pressure and have difficulty viewing the CCTV evidence (if it had been lodged at all) prior to the accused appearing in court. We noted the good practice in some courts of a ‘viewing room’ being made available for this purpose.

31. Where Crown witnesses needed an interpreter the Crown has a responsibility to request an appropriate interpreter for the trial. Although few such cases arose in our case review there was good compliance where it did arise.

32. In some cases, although proceedings were taken, further enquiries were necessary and we found some examples of good practice where the marking Fiscal had issued instructions on further investigation. Unfortunately in some cases this work was undone by a failure to have a ‘review’ or ‘bring up’ stage to check on receipt of this further information and if necessary add additional witnesses etc.

33. One of the most common examples of the lack of follow up was in the ordering of identity parades. These are especially relevant when dealing with vulnerable or child witnesses to allow ‘special measures’ to be taken such as the use of a screen or a remote CCTV site. A ‘bring up’ or review date was frequently missing necessitating further action at a later stage again with the possible implication for churn. Given the very late point (in some offices) when this later work was carried out it meant that cases would inevitably ‘churn’.

34. We expected tracking of items which required further action to be dealt with by a diary system prompting review. The IT system allows for this. We examined the IT system for the cases we reviewed and while it was common to find the administrative staff using a diary system for ‘bring ups’ in relation to ordering full statements etc it was not routinely used for requests for productions.

35. Part of summary justice reform is a drive towards focusing at trial on only what issues are in dispute. Statutory obligations lie on the Crown and defence to agree evidence prior to trials and the Sheriff has a statutory duty to enquire (at the intermediate diet) about the extent to which both sides have complied with their duty to agree evidence.

36. COPFS in-house guidance stresses the importance of prosecutors identifying evidence capable of agreement **before** the intermediate diet and at the initial marking stage. However, other pressures and priorities at the marking stage meant this was less likely to be the focus of attention.

37. In-house guidance does not prescribe how this evidence should be dealt with once identified. In practice we found it was rarely done and where it was done 3 possible methods were available. In some of these we found no action had been taken to progress the matter even where evidence had been identified as capable of agreement.

38. We considered the stage at which attention could be better focused on agreeing evidence and suggest a time when full statements, productions etc ought to be available might present a better opportunity. This would enable proactive contact with the defence and put the Crown at an advantage at the intermediate diet.

39. Some cases initially follow solemn (as opposed to summary) procedure and following review can be 'reduced' to summary. We thought that, given the greater initial input into such cases, that they would fare better but we found this was not the case. We could find no specific guidance for staff on how to deal with cases reduced to summary and they could, therefore, fall between two stools.

40. Finally at the marking stage we looked at cases which because of their size or complexity required 'advance preparation'. We found for the most part such cases were identified properly at this early stage (in contrast to what happened to them later in the process).

41. We next looked at the pleading diet stage when the case calls in court for the first time. There is the option at this stage to 'continue without plea' and in-house guidance encourages court Fiscals so to do if they believe that the case is capable of resolution. We saw some good examples of this when CCTV evidence was available and once viewed by the defence a plea of guilty was forthcoming.

42. If a plea of not guilty is tendered the court must fix both an intermediate diet and a trial diet. CJS targets provide for end to end targets and delay periods from pleading diet to trial diet varied in our sample from 12 to 21 weeks (the national average is 14). There is no statutory timing for the intermediate diet in relation to the trial diet. COPFS guidance suggests that a period of 4 weeks is preferable. In 3 of the 8 offices we looked at the gap was only 2 weeks. The timing can be crucial, too close to the trial diet and there is little room to fill any gaps that might be discovered at intermediate diet preparation. As in some cases this preparation was the day before the intermediate diet then there was no realistic opportunity of filling any gaps and this inevitably led to 'churn'.

43. None of the offices we looked at provided for any review of the case immediately after the pleading or first diet. The next review point was the depute Fiscal's preparation for the intermediate diet. A case can consequently go into limbo for several weeks when new correspondence can remain unanswered.

44. We looked in particular at the actions of administrative staff. They have the benefit of best practice guidance (a case processing manual and a disclosure manual). In 6 of the 8 offices we visited these were supplemented by local desk instructions. All staff spoken to were aware of the guidelines and associated targets.

45. The activity of the administrative staff is vital to enable the system to work. No amount of legal input is meaningful if the appropriate action is not taken.

46. We found that administrative staff did prioritise the work which had to be done eg dealing with custody cases first. In the main administrative staff were able to understand the instructions given. However, timing could be an issue. In one office there was at least a 3 week delay in updating cases from court – this could have a dramatic impact especially as there was only a short period between pleading diet and trial diet.

47. Concern was expressed to us about the levels of staff and this was reflected in minutes of staff meetings and echoed in a union submission to Scottish Government. In some offices there were continuing problems with backlogs. We were impressed by the commitment and attitude of staff. All spoken to were keen to do a proper job but 'fire fighting' prevented this. One example was the time taken to request full statements (which triggers disclosure procedures). While most offices were close to target one only managed this in about half of all their cases. This has an impact on partners, giving them less time to obtain and supply information.

48. Similarly the police have targets to supply the full statements once requested. Police performance in this is monitored and has improved over time. One problem, however, is that achievement of the target is triggered by the receipt of the first statement. Subsequent statements may, however, be submitted outwith the target without that being noted.

49. This is a crucial area because it was clear that in the next stage, namely disclosure of the statements to the defence, was wholly reliant on the timely submission of the statements by the police. Clearly late disclosure to the defence could result in 'churn'. Performance was variable but we observed instances of disclosure being made only at the intermediate diet stage and in open court.

50. A more thorny issue was the citation of witnesses. Since 2003 COPFS for civilian witnesses has largely used postal citation with a backup of personal service by the police should postal citation fail.

51. We identified 2 issues about witness citation namely the timing of the citation and proof of the service of the citation. We found that 5 of the 8 offices issued citations within target with one office only managing it in just over 50% of the cases we looked at.

52. Given the differences in timing between pleading diets and trials we wondered if the target for issuing citations should be a period before the intermediate diet (say 8-10 weeks) rather than a period after it. Also we found that achievement (or otherwise) of the target was not measured by COPFS. This was an area for potential 'churn' at both intermediate diets and trial diets and should be measured.

53. One issue raised by Sheriffs was the ability of the Crown at intermediate diets to furnish the court with accurate, reliable information on whether the witnesses had been cited. COPFS has a 'witness cited for court' report available and we were pleased to note that an improved version of this report was introduced in April 2012. This should provide better information for the court.

54. We found some misunderstandings and confusion between COPFS and the police for the procedures to be followed following a failed postal service. However, we noted the work of a multi-agency working group (under the Making Justice Work programme) called the 'Getting Witnesses to Court' group. We also noted a pilot using text messages to remind witnesses to attend court, a system we believe used successfully elsewhere such as the NHS for appointments.

55. We noted the use of email to cite police witnesses and better efforts to accommodate police leave when fixing trial diets to avoid clashing with police holidays and shift patterns. This should reduce the need to reschedule trials because of clashes with police leave and hopefully reduce 'churn'. Better information from the police on civilian witness availability would also be a help.

56. We looked specifically at administrative staff work (as opposed to legal staff) in the context of ordering productions. Overall we found that administrative staff did what was required, sometimes acting on their own initiative in the absence of instructions. Targets, however, were not monitored and we noticed one office had a high percentage of late requests. We found some confusion in the ordering of CCTV footage with unnecessary duplication of effort. We also found, however, some shortfalls on the part of the police.

57. In relation to forensic reports a protocol exists between COPFS, ACPOS and the SPSA contains detailed rules about the way (and timing) in which analysis is instructed. There were problems in late

requesting of these (and late submission). In some cases the police also caused delay in failing to lodge productions with the laboratory. We were advised by one Sheriff that that he found significant delays in the Crown obtaining forensic reports which had led to ‘churn’.

58. The police, at the time of inspection, had 8 gateways (one for each force) but there were plans for a single gateway on moving to a single force. COPFS also had an (electronic) gateway through which all requests for forensic work were channelled. This provided a quality control over requests and the opportunity to monitor performance. This had highlighted some training issues.

59. We found close co-operation between the forensic services of SPSA and COPFS, both sides recognising the need for improvement. There were ongoing discussions about creating a single COPFS/SPSA gateway with staff co-located. For its part, despite considerable budget (and staffing) reductions SPSA advised that it had improved its performance by way of stringent systems reviews. At the time of publication of this report considerable improvement in performance was anticipated.

60. In respect of CCTV evidence and forensic reports there is a need for an effective follow up procedure to ensure receipt and service of the necessary documentation. A diary ‘bring up’ system is essential.

61. We looked closely at disclosure which had presented COPFS with considerable additional work. Various methods of disclosing statements to the defence had been tried including ‘pen’ drives but now ‘secure web’ disclosure had been rolled out. This received virtually universal approval. It put the defence on the back foot as the Fiscal in court had access to good information. We saw instances, however, where courts allowed adjournments (or ‘churn’) despite disclosure having been made and the defence agreeing they were at fault.

62. However, we did note problems staff had in achieving disclosure in the timeframes given, usually put down to a lack of staff to deal with this work but included also late instruction from the defence, the time required to scan documents, late receipt from the police, CCTV tapes etc not playing and repeat disclosure.

63. In relation to disclosure of statements we found inconsistencies in the various offices we visited. We carried out our own audit of the cases we had reviewed and for the most part found that there had been full disclosure. There was however the odd exception. Although disclosure had been largely done we did note poor performance in the timing of it in 3 offices in particular. One office had only achieved full disclosure within target in 3 out of 41 cases. We have to add, however, that in 11 of these cases not all statements had been submitted by the police in time.

64. We looked at the disclosure of Previous Convictions and Outstanding Charges (PCOCs) as they related to witnesses. These require disclosure by the Crown. The 'trigger' for requesting information (and hence disclosure) is a criminal record office reference number on the details of the witness. Administrative staff make the request directly to Scottish Criminal Records Office (SCRO) and a process of 'redaction' is then undertaken by legal (or in some cases) trained administrative staff.

65. We found this procedure followed in most cases we examined but in one office we found that it had been overlooked in 8 out of 41 cases reviewed. This is a matter of some concern.

66. When it came to disclosing productions we did find pockets of good practice with disclosure (at that time) by way of pen drive. However, we were disappointed in the level of record keeping both in respect of what had been lodged with the Procurator Fiscal and what had been disclosed. We hope web disclosure will improve things but staff informed us the process of naming and then scanning large volumes of paper productions was very time consuming. In some cases we found only partial disclosure had been made despite all the productions having been lodged at the Procurator Fiscal's office. In others we found partial and late disclosure.

67. 'Hard' productions (or labels) were generally disclosed to the defence by mention of them in the 'disclosable summary' of the evidence given at the outset of the case. Internal guidance provides that the defence should be told of the location of these items and given a named contact for viewing. We could find no evidence of this being done in any of the cases we examined.

68. CCTV evidence also provided problems for disclosure. We have to note one good practice where the police supplied extra copies for the defence obviating the need for in-house copying. There were noted instances of difficulty also in playing CCTV tapes etc. According to internal guidance CCTV evidence should never be disclosed without first being considered by a legal member of staff. We noted that this was rarely (if ever) done.

69. As stated, we attended at live court hearings. In relation to disclosure generally in one of the offices one third of the cases had disclosure issues and in some of these cases our own enquiries revealed late requests to the police although the court did not enquire as to the reasons. In another office again one third of the cases also had disclosure issues and it was apparent from both the legal and administrative staff who spoke to us that disclosure was being done at the very last minute. For the most part in other offices we found disclosure had been carried out ahead of the intermediate diet.

70. Accused who changed defence lawyers also caused problems with disclosure as the new solicitor awaited receipt of disclosure from the previous one. One huge benefit of the secure web system is that it puts the defence on the back foot and prevents them making vague accusations of non-disclosure.

71. Finally in relation to disclosure generally we found there was no mechanism in place to measure achievement of timely disclosure. At present a manual check on individual cases is the only option. This is time consuming and inefficient as we found in our own case review.

72. We looked at issues arising in relation to the preparation for and conduct of intermediate diets. Intermediate diets were designed to filter out cases which didn't require to go to trial and act as a prompt for parties to agree evidence.

73. We found the size of intermediate diets varied widely across the country, this has important implications for their preparation. We found that preparation for intermediate diets was usually the first occasion (after the case had been marked) that any thought was given to the case as a whole. Pressure to prepare for such diets we felt led to a culture of preparing for the intermediate diet itself rather than taking a holistic view of the case. It was apparent it was being used as a 'long stop' to weed out dubious decisions to prosecute in the first place.

74. We also found wide variation in the gap between pleading diets and intermediate diets (the shortest being one week, the longest 31 weeks). The gap has to be sufficiently long to allow for ingathering of eg full statements and other material and disclosure to the defence carried out.

75. In-house guidance suggests preparation for the intermediate diet should be two weeks prior to the court and agreement of evidence considered. In the 8 offices we visited we found a wide variation in the time at which such preparation was carried out (it varied from 2 weeks to the day before).

76. Preparation needs to be done by both administrative and legal staff. As with legal staff we found the time when administrative staff prepared cases varied considerably. The timing is crucial as too far in advance is pointless if the relevant material has not yet arrived and too short leaves no time for proper preparation.

77. We found 'checklists' in use in all 8 offices visited but they were all different. Standardisation of these would be helpful (especially in view of the new Federation structure referred to).

78. We also looked at how many intermediate diets were adjourned to a further intermediate diet and the reasons why. National figures over a 3-year period showed fairly consistent averages of about 23% (since

2009). We found there was no formal COPFS monitoring of adjourned intermediate diets although we noted the good practice in one district of the Procurator Fiscal monitoring these **and** using the results to highlight issues either internally or with criminal justice partners. Area criminal justice boards had also been active in monitoring this.

79. When we viewed live intermediate diet courts we regularly heard the Crown asking the defence to agree evidence which tended to reflect lack of contact **before** the court. This matched our closed case review findings.

80. Internal guidance encourages Fiscals to make proactive contact with defence lawyers. In some courts 'clinics' were available and in one court a second Fiscal was available for discussion in court on the day of the intermediate diet. This recognised the reality that the defence may have had little or no contact with their client before that date. Indeed one of the benefits of the intermediate diet is the forced gathering together of parties in the same place and at the same time.

81. We felt court based arrangements either on the same day or close to the diet itself worked best. They also preferred to deal with experienced Fiscals willing to make decisions. In some cases late disclosure was cited as a difficulty and in some courts this appeared to us to be a justifiable concern. There was a perception in some defence quarters that the Crown had insufficient time to prepare.

82. Sadly we received complaints about failure to respond to correspondence (also highlighted in some of our published Area reports). In 6 of 8 offices we found evidence of unanswered correspondence including a plea of guilty. Some offices had attempted improvement by providing eg direct phone numbers. Defence lawyers we spoke to on occasion said this did not work as the Fiscal was not available whereas prosecutors told us that defence uptake was poor. A new secure email service is now being offered which may improve two-way communication.

83. Fiscal preparation was considered in detail. The recommended maximum number of cases in these courts is 30. Preparation time is crucial. Time was an issue in every office we visited and the focus was getting over the 'hurdle' of the diet rather than preparation of the case itself. Overloading beyond 50 was commonplace with no corresponding account being taken of that in preparation time.

84. We also found the perceived attitude of the Sheriff had a significant bearing on both the prosecution and the defence and affected their degree of preparation. The role of the judge we consider crucial in the whole process as underlined by pronouncements recently by several senior judges that judges have to be proactive in the management of the business before them. In our court observations we saw variations in attitude often reflecting the size of the court itself.

85. We found different practices in the way Fiscals prepared their courts with use made of various types of checklists. There was a need to gather information from various IT systems and also from hard copy. A single portal would be helpful but at the moment seems unlikely. Only occasionally did the Fiscal read the full statements in the case. This was understandable because of time constraints but an unfortunate omission. Where it did take place we saw action as a result such as discontinuation of proceedings or the citing of additional witnesses.

86. We found good practice in one office and clear evidence of leadership moving towards a more holistic preparation of the case with good joint working by both legal and administrative staff.

87. We found little evidence of routine attempts at negotiating pleas or agreeing evidence during intermediate diet preparation. As previously stated this is a lost opportunity and could have put the defence on the back foot if put under scrutiny by the Bench.

88. At present (under current guidance) the first legal review of initial legal instructions takes place at any time between two weeks and one day before the intermediate diet. Our view was that even two weeks before intermediate diet was too late. It seemed to us that what was needed was a holistic legal review of the case at the point when all the statements and productions (including CCTV) were to hand and about to be disclosed. Following such a review of the evidence, the letter accompanying full disclosure should propose areas for agreement and provide a named legal contact. Only by doing this would the Crown fulfil its statutory obligations for the intermediate diet.

89. Not all continued intermediate diets are intrinsically bad. If the problem or case is resolved pre-trial then that is a good use of an adjournment. During our live observations in court we found that as many intermediate diets were continued on defence motion as by the Crown. Defence reasons for asking for adjournments included resolution of the case, illness or absence on the part of the accused, obtaining specialist reports, change of agency, late instructions by the client and in some occasions awaiting viewing of CCTV evidence and also disclosure. We did see some good examples of Fiscals in court being able to challenge the defence position but there was an understandable reluctance on the part of the Bench to penalise the accused because of shortcomings of his lawyer.

90. Where cases proceeded beyond intermediate diet to the trial it was useful for Fiscals to have ring-fenced time to instruct any further action required for the trial and to prepare any formal minutes of agreement of evidence. Such time was not always made available.

91. Where trials did not take place on the appointed date the reasons for adjourning also varied considerably. Crown motions to adjourn were

most often down to the absence of essential witnesses. The reasons behind such failures to attend court are being explored in depth by the 'Getting people to court' group working within the wider 'Making Justice Work' programme of Scottish Government. Often the accused failed to appear resulting in the trial going off. Often 8 to 10 trials are set down to be heard in a court and it is unrealistic to expect that evidence will be heard in more than one or two cases at most.

Overall Conclusion

92. We found that the policies were in place to deliver improvements in summary cases but there were gaps in implementation.

93. The reasons for 'churn' varied, it was sometimes attributable to action or inaction on the part of the Crown and sometimes on the part of third parties or both.

94. Sheer volume of cases frequently (especially in the larger offices) militated against good timely preparation. Intermediate diet courts in particular were often found to contain larger numbers than considered desirable.

95. We noted the discontinuation of self assessment but felt some method of analysis of cases especially those with poorer than expected outcomes was necessary.

RECOMMENDATION 1

We recommend revision of the method of requesting productions on FOS to enable a tick box option against each listed production in the SPR.

RECOMMENDATION 2

In situations where action is required in various stages such as obtaining and serving forensic reports, CCTV evidence, identification parades etc the Fiscal should instruct a diary entry on FOS and clear instructions as to the follow up stages needed. Ways of achieving this more easily on the IT system should be explored.

RECOMMENDATION 3

For clarity at the marking stage use should be made of only one method of suggesting to the defence what evidence could be agreed.

RECOMMENDATION 4

We recommend the creation of guidance in relation to reduction to summary clarifying what and by whom trial preparation is instructed.

RECOMMENDATION 5

We recommend that the Acceptable Plea position be retained but only 'in-house'.

RECOMMENDATION 6

We recommend more robust FOS audits be carried out to include trial preparation instruction.

RECOMMENDATION 7

We recommend discussions take place with ACPOS to encourage more recording of civilian witness availability.

RECOMMENDATION 8

Desk instructions should, if not available, be created and updated regularly.

RECOMMENDATION 9

We recommend COPFS measure target achievement in relation to witness citation.

RECOMMENDATION 10

Given its potential importance we recommend closer attention is paid to obtaining and disclosing previous criminal history records of witnesses.

RECOMMENDATION 11

We recommend the creation of a system to monitor performance on disclosure.

RECOMMENDATION 12

We recommend that efforts are made in liaison with Scottish Court Service to limit the number of intermediate diets to the recommended maximum of about 30.

RECOMMENDATION 13

We recommend the use of one standard method of recording administrative action for preparation of intermediate diets.

RECOMMENDATION 14

We recommend that a holistic legal review of the case should take place when full disclosure is made to the defence including proposals for agreeing evidence and a named point of contact.

RECOMMENDATION 15

Advance notice trials should be allocated only by legal staff and appropriate time allowed for their preparation.

RECOMMENDATION 16

We recommend that a system of self assessment be put in place as soon as possible to enable in-house assessment of the quality of decision making and subsequent process.

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