

annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2005-2006



SCOTTISH EXECUTIVE



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INSPECTORATE OF PROSECUTION IN SCOTLAND **2005-2006**

**TO THE LORD ADVOCATE
I HAVE THE HONOUR TO SUBMIT MY
SECOND ANNUAL REPORT TO THE
SCOTTISH PARLIAMENT.**

SE 2006/166

SEPTEMBER 2006

JOSEPH T O'DONNELL
CHIEF INSPECTOR
INSPECTORATE OF PROSECUTION IN
SCOTLAND

SE 2006/166

Laid before the Scottish Parliament by the
Lord Advocate

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1. CREATION OF INSPECTORATE

The creation of the Inspectorate of Prosecution in Scotland was the first recommendation of the Jandoo report into the handling of the death of Surjit Singh Chhokar.

Following the creation of a project team and a public consultation exercise the Inspectorate was established in December 2003 and a team of staff recruited to commence the first work of the Inspectorate under an interim Chief Inspector.

2. APPOINTMENT OF CHIEF INSPECTOR

A public recruitment exercise took place in early 2004 and following an open competition the first Chief Inspector was appointed in August 2004.

3. SECURING INDEPENDENCE

At the time of publication of the Jandoo report the Crown Office and Procurator Fiscal Service (COPFS) had an Internal Quality and Practice Review Unit which reported to the Crown Agent as the internal civil service head of the department and its reports were not automatically published or disseminated externally.

All inspectorates seek to achieve independence and the project team looked at some principles common to other organisations including (among others) the need to have freedom in the areas and topics to be covered, publication of reports, separation from the department inspected, a statutory basis, lay involvement, independent of pressure groups, transparency and evidence based conclusions.

To secure the independence of the Inspectorate a number of steps have been taken including the following:

- The budget was transferred to the Finance and Central Services Division of the Scottish Executive in April 2004. A budget for the first three years of the Inspectorate's life was agreed.
- A Memorandum of Understanding was agreed in 2004 among the Lord Advocate, the Chief Inspector and the head of Finance and Central Services of the Scottish Executive (the Inspectorate's sponsor Department). This dealt with the aims, functions and status of the Inspectorate and defined responsibilities; in particular it provided that the Chief Inspector should not be subject to direction on how inspection is carried out.
- The Inspectorate became operational in December 2003 on an administrative basis albeit divorced from the COPFS and gathered information etc under the authority of the Lord Advocate to whom all its reports were submitted.

As part of the public consultation exercise it was proposed that the Inspectorate be placed on a statutory basis and an early legislative opportunity sought to do this. This would enhance the independence and status of the Inspectorate and place it on an equal footing with other Criminal Justice Inspectorates such as Her Majesty's Inspectorate of Constabulary and Her Majesty's Inspectorate of Prisons. It would help to distance the Inspectorate from COPFS and set it apart from its management structure.

Accordingly, sections have been inserted in the Criminal Proceedings etc (Reform) (Scotland) Bill currently before the Scottish Parliament to achieve this. This mirrors similar legislation in England establishing the Crown Prosecution Service Inspectorate.

- Wide use is made of lay input in various forms including membership of reference groups formed to assist with reports, questionnaires to system users and others and meetings with relevant groups.
- The Chief Inspector reports to and is directly accountable to the Lord Advocate bypassing the internal management structure of the Department.
- All of the reports of the Inspectorate are published.

4. RECRUITMENT OF STAFF

During 2006 the Inspectorate achieved its complement of six staff comprising three legally qualified staff (the Chief Inspector, a Principal Inspector and a Legal Inspector) together with an Admin Inspector with an audit background, a Statistician/Researcher and the PA.

5. ACCOMMODATION AND IT

The Inspectorate continues to occupy an office in Glasgow separate from COPFS premises. A move to new premises in Glasgow is planned for Spring 2007 when the current lease expires.

COPFS continues to give access to its IT systems (essential for inspection work) in terms of the protocol previously agreed and the Inspectorate has separate access to the Scottish Executive Scots IT system.

A dedicated Inspectorate website has been created (www.scotland.gov.uk/Topics/Justice/ipis). All reports are published here and background and further information is available.

6. INITIAL WORK OF THE INSPECTORATE

The Jandoo report had recommended that the first work of the new Inspectorate should be a thematic report on the handling of race issues by the Crown Office and Procurator Fiscal Service. This report was delivered to the Lord Advocate in November 2004 and subsequently published. It contained 12 recommendations all of which were accepted by the Lord Advocate.

Dr Jandoo in his report had also recommended that the Inspectorate should conduct a thematic inspection of the response of the Crown Office and Procurator Fiscal Service on victim and witness issues. This led to a joint thematic report in conjunction with Victim Support Scotland's Witness Service on "the provision of services to witnesses" and was delivered to the Lord Advocate in March 2006. This contained six recommendations and again these were accepted by the Lord Advocate.

Additionally Dr Jandoo had recommended regular audits by the Inspectorate of the then Regional (now Area) and District Offices of the Procurator Fiscal Service in order to ensure uniform compliance with the Department's race relations policies and strategies. Since the Inspectorate's inception 26 such inspections have taken place in accordance with a work programme which provides for at least 1 office being inspected each month. The results of these office inspections are summarised in Annex A. The number of these was increased during 2006 from 12 to 18 and all offices should be inspected by early 2007.

It was also intended, in line with current thinking on the inspection process generally, to conduct cross-cutting joint thematic reports with Criminal Justice Partners wherever possible. A joint thematic was therefore agreed with HM Inspectorate of Constabulary on case management and this was published on 24 August 2006 and contained 14 recommendations submitted jointly to the Justice Minister and the Lord Advocate. These recommendations have also been accepted. A summary of the thematic reports is contained in Annex B.

Currently, the Inspectorate is conducting a thematic report on liaison in death cases with next of kin with particular reference to organ retention. This followed on from a recommendation in the report by the Independent Review Group on Retention of Organs at Post-Mortem. This report is scheduled for delivery later in 2006.

7. LORD ADVOCATE'S ADVISORY GROUP

As part of the public consultation exercise on setting up the Inspectorate (during 2003) it was proposed that there should be an Advisory Group to guide the work of the Inspectorate and assist with the work programme thus enhancing independence. The group was to include independent external members to bring an independent perspective to the work of the Inspectorate and provide a focus for benchmarking performance. The functions of the group would be to provide advice on the programme of the Inspectorate and keep the working relationship between the Inspectorate and COPFS under review.

Several of those who responded expressed positive support for the proposal to create the group; some queried whether members of the group from COPFS would be able to influence the deliberations of the group. In his response the Lord Advocate stated he wished to emphasise that it was his intention to appoint members from a diverse background to add an external perspective and to have shareholder representation.

Accordingly, the Group was established during 2006 and currently consists of the Solicitor to the Scottish Executive (who acts as chair), the Crown Agent and Chief Executive of COPFS, the Deputy Chief Executive of COPFS, the Director of Public Prosecutions for England and Wales, the Equal Opportunities Commissioner for Scotland and, at the time of writing, two external positions are being advertised to try to achieve as wide a group as possible.

The next meeting of the Group in Autumn 2006 will address the future work programme.

8. FUTURE WORK PROGRAMME

The role of inspection generally has been under review in recent years and currently the view is that the inspection process should focus upon:

- Risk assessment based inspection targeted on identified problems and key challenges for the organisation, areas for improvement and potential good practice.
- Harnessing business excellence/self-assessment activity to inspection to help identify where inspection might usefully focus and to promote effective use of performance based improvement processes.
- Thematic studies including Criminal Justice System wide joint inspection activity to promote whole-systems effectiveness across the Criminal Justice System.

It is intended that the Inspectorate should operate in a dynamic way focusing on specific areas of performance and making recommendations, which seek to make improvements in service delivery.

Recent IT improvements have resulted in improved management information in COPFS, which can be utilised by the Inspectorate in identifying areas to be examined.

Internal management has the primary responsibility for performance and rigorous self-assessment has an important role to play in effective performance management. Recent changes to the management structure of COPFS have provided a framework within which such rigorous self-assessment can take place.

The work of the Inspectorate has to reflect and complement these developments and concentrate on areas where its expertise will be of greatest value.

From its commencement, the work programme of the Inspectorate has followed the Jandoo recommendations. This will cease by the end of 2006 and a new programme will be produced in Autumn 2006 for 2007.

In line with this current philosophy on inspection certain common principles on inspection are followed. In particular a risk-based approach is adopted and the 10 Principles of Inspection, promulgated by the then Office of Public Services Reform, followed. A detailed Handbook dealing with the approach to inspection and methodology, etc. has been prepared and will be available on the website.

Wherever possible, joint work with Criminal Justice partners is undertaken to get a system wide consumer perspective. The recent Joint Thematics with Victim Support Scotland and Her Majesty's Inspectorate of Constabulary are examples of this.

Use is made of Reference Groups of experts and interested parties and extensive consultation with users and appropriate groups undertaken. Efforts are made to take a "consumer's perspective" and considerable use is made of questionnaires and meetings with groups and relevant organisations to get as wide an input as possible.

In the office inspection programme a risk-based approach is undertaken in examining relevant cases targeting areas which might be of concern. All reports are submitted to the Lord Advocate and published.

It is intended to build on these principles during 2006 and beyond and continue to establish the inspectorate as a useful agency for driving up performance and confidence in the Criminal Justice System.

A handwritten signature in black ink that reads "Joseph T. O'Donnell". The signature is written in a cursive style with a large initial 'J' and 'O'.

Joseph T O'Donnell
Chief Inspector

ANNEX A

OFFICE AUDITS

The current Business Plan provides for every office to be inspected for compliance with Crown Office race policies and this programme will be completed in early 2007.

The approach to these inspections mirrors our first thematic report and deals with race crime, interpreting/translation, staff profiles, investigation of deaths, complaints against the police and outreach/consultation activities.

The Lord Advocate issued (having consulted with the Commission for Racial Equality) detailed instructions to Procurators Fiscal on the approach to be adopted to the prosecution of race crime. A strong presumption in favour of prosecution where there is sufficient evidence was put in place. Over 1,200 individual charges (900 cases) have been examined by us and overall compliance has been very high.

The overall national figure of staff from a minority ethnic background (as self reported) is 2% which mirrors the general minority ethnic population for Scotland (based on current available data).

The following is an office-by-office brief summary of what was found. The full reports can be read on our website at www.scotland.gov.uk/Topics/Justice/ipis/Intro

ABERDEEN – OCTOBER 2005

The Aberdeen office had a high level of compliance with the departmental policy relating to the prosecution of race cases.

Particular care had been shown in those deaths which required sensitive handling for religious or cultural reasons.

On outreach and consultation the Aberdeen office had the benefit of a local Racial Equality Council on which it is represented and a Diversity Team to take forward diversity issues.

AIRDRIE – MARCH 2005

The Airdrie office was found to have a high standard of compliance with the prosecution policy on race cases.

Consultation with the local community appears to be particularly effective.

ARBROATH – MARCH 2006

During 2002 and 2003 the Arbroath office showed an apparent high level of non-compliance with Crown Office policy on prosecution of race cases. However, the papers were no longer available and could not be reviewed to determine the precise reason. In respect of the years 2003-04 and 2004-05, with the exception of two cases which we were unable to examine, we found that all the others had been dealt with appropriately indicating that any problem here might have been historical rather than current.

AYR – APRIL 2005

The Ayr office had a high level of compliance with departmental policy on prosecution of race cases. The office fast-tracked race crimes and was active in trying to improve conditions for interpreters working at court.

CAMPBELTOWN – MAY 2006

Campbeltown had a high level of compliance with policies on prosecution of race cases. However, we did have some concern that not all suitable cases were being referred to VIA (Victim Information and Advice). The staff in the office did show commendable commitment in dealing with Campbeltown work despite its distance from its Area Headquarters (Paisley).

DUMFRIES – JULY 2005

The Dumfries office had a very high level of compliance with departmental policy on the prosecution of race crime.

So far as outreach with the local community is concerned the office is well served by a number of dedicated members of staff with a long history of interest in this area. This is despite the low level of the minority ethnic community in the area.

DUNDEE – MAY 2006

Overall compliance with policy in the marking of race cases in Dundee was high. Although we highlight what we consider to be some breaches these were small compared to the overall case numbers.

In addition, several members of staff were active in outreach activities with the local community.

DUNFERMLINE – NOVEMBER 2005

The Dunfermline office had a high level of compliance with departmental policy regarding prosecution of race cases.

A death of a member of the minority ethnic community had been particularly sensitively handled.

Several initiatives were underway at the time of inspection regarding outreach into the local community.

EDINBURGH – APRIL 2006

Given the volume of cases examined (our biggest inspection at that time) compliance with the policy on the prosecution of race crime was very high. The few cases with which we took issue being very much the exception.

Various initiatives to carry forward liaison with the local community were in existence.

Two cases of complaints against the police involving a minority ethnic complainer were examined and both were found to have been dealt with properly.

FORFAR – MARCH 2006

Of the charges examined by us in the Forfar office two were, in our opinion, found not to have complied with the prosecution policy. These are discussed in detail in our report.

The District Fiscal and his Depute are both members of the Area Diversity Team. The District Fiscal provides feedback from the Area Diversity Team to staff in the Forfar office.

FORT WILLIAM – SEPTEMBER 2005

The Fort William office had a very high level of compliance with departmental policy on the prosecution of race crime.

The area has a fairly high level of immigrant workers and the local District Fiscal is well aware that these are frequently the target of racial abuse.

GLASGOW G DIVISION – JUNE/JULY 2005

A high number of race offences are reported to Glasgow G Division and our analysis of a large number of these showed an overall very high level of compliance with departmental policy. The three exceptions we found had largely been dealt with at the time of the inspection.

Glasgow G Division had made strenuous efforts both in conjunction with partners and on its own initiative to obtain links with the local community. It is to be commended for this work.

The staffing profile in the Glasgow office for members from the minority ethnic community is 14% against the local population of 5%. This is in no short measure due to the number of outreach initiatives conducted by the Glasgow office. In particular it had the benefit of a secondee from the West of Scotland Racial Equality Council and staff visits to mosques, Sikh temples, etc. are frequent and very popular.

HAMILTON – OCTOBER 2004

Individual race cases were not examined in Hamilton on this preliminary visit but it had a very sophisticated case-tracking and monitoring system. This ensured that the person responsible for monitoring race cases was certain that all such cases were referred to her.

It was also found to be in the van of good practice regarding outreach initiatives and again made good use of the assistance offered by a secondee from the West of Scotland Racial Equality Council.

A number of deaths involving the minority ethnic community were examined and all had been dealt with in an extremely sensitive and effective manner.

INVERNESS – SEPTEMBER 2005

The Inverness office had a high level of compliance with departmental policy on the prosecution of race crime.

Consultation with the local community is a strong point of the office and the Area Business Manager at the time of inspection was the Chair of the Highland Alliance for Racial Equality (HARE) which is the main vehicle for keeping in touch with the local minority ethnic community. The area also had a significant number of immigrant workers particularly of Polish and Kurdish extraction. Relevant deaths had been properly and sensitively dealt with.

JEDBURGH – JUNE 2006

Overall compliance in the Jedburgh office with Crown Office policies on race crime was high.

So far as outreach is concerned the District Fiscal is kept informed of race issues at Area Team Management meetings and the local police also liaise with him on any such issues. Any relevant information is passed on to the staff.

KILMARNOCK – APRIL 2005

The Kilmarnock office had a high level of compliance with departmental policy on the prosecution of race crime, indeed no breaches of any description were found on inspection.

Partnership working and outreach were found to be very much on the agenda of the Kilmarnock office. A considerable amount of outreach work had been done. In addition, efforts were made to assist interpreters called to court. The office was also proactive in monitoring the profile of offences and offenders.

LANARK – FEBRUARY 2005

Lanark had a high level of compliance with prosecution policy on race crime.

LOCHMADDY – APRIL 2006

Only one case was examined from the Lochmaddy office which on the face of it involved a deviation from the policy but on closer examination good reasons were found for the course that had been adopted.

PAISLEY – JANUARY 2006

Generally, compliance with prosecution policy on race crime in Paisley was high. The few cases with which we took issue being very much in the minority.

Consultation with the local community was continuing and at the time of inspection networking arrangements were under review.

PERTH – AUGUST 2005

Perth had a high level of compliance with the prosecution policy on race crime.

At the time of inspection outreach initiatives were in their infancy. However, an infrastructure had been put in place. The District Fiscal was a member of the local Multi-Agency Racial Incident Monitoring Group (MARIM) which had been established by a former member of the Fiscal staff.

SELKIRK – JUNE 2006

Overall, compliance of the policy on prosecution of race crime was high in the Selkirk office. The local minority ethnic community is very small mostly involved in the catering industry.

STIRLING – FEBRUARY 2006

Stirling had a very high level of compliance with the policy on the prosecution of race crime and there were several examples of good practice.

On the consultation front, Stirling had been proactive in maintaining and creating links with the local community.

In addition, six cases of complaints against the police by members of the minority ethnic community were examined and all were found to have been properly investigated.

STORNOWAY – APRIL 2006

The Stornoway office showed a high level of compliance with prosecution policy on race crime, most of the complainers being of English origin.

STRANRAER – AUGUST 2006

The Stranraer office had a high level of compliance with prosecution policy on race crime several examples of good practice being found.

ANNEX B

THEMATIC REPORTS

Thematic reports run in tandem with office inspections, usually two per year. The full text of these can be read at www.scotland.gov.uk/Topics/Justice/ipis/intro.

THEMATIC REPORT ON THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE'S RESPONSE ON RACE ISSUES

This was the first thematic report by the Inspectorate of Prosecution in Scotland and was delivered to the Lord Advocate in November 2004. It contained 12 recommendations all of which were accepted.

As part of the Inspectorate's ongoing work we monitor compliance of the recommendations and are in regular communication with the Crown Office and Procurator Fiscal Service regarding these.

The ongoing inspection of every office in the country for compliance with the policies on race issues enables the Inspectorate to update the information obtained in the thematic report.

In keeping with other thematic reports a Reference Group was created consisting of persons and organisations with expertise in the field. This enabled a considerably wider input into the thematic work than might otherwise have been possible.

JOINT THEMATIC REPORT ON THE PROVISION OF SERVICES TO WITNESSES

This joint thematic report in conjunction with Victim Support Scotland (and the Witness Service) was delivered to the Lord Advocate in March 2006. This contained six recommendations and these were all accepted.

The Reference Group for this thematic included Victim Support Scotland, Scottish Court Service, Scottish Executive Victim and Witness Unit and Crown Office Victim Information and Advice.

JOINT THEMATIC ON CASE MANAGEMENT

This thematic report produced in conjunction with Her Majesty's Inspectorate of Constabulary was published in August 2006 and contained 14 recommendations. The recommendations were accepted.



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