



# annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2011-2012



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SCOTTISH GOVERNMENT



# annual report

INSPECTORATE OF PROSECUTION IN SCOTLAND

2011-2012

TO THE LORD ADVOCATE

I HAVE THE HONOUR TO  
SUBMIT MY SEVENTH ANNUAL  
REPORT TO THE SCOTTISH  
PARLIAMENT.

OCTOBER 2012

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

LAID 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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APS Group Scotland  
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# FOREWORD

## **To the Right Honourable Frank Mulholland QC The Lord Advocate**

This is my fifth report as Her Majesty's Chief Inspector of Prosecution in Scotland since the office was established as a statutory one in April 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.

My duty in terms of the legislation is to secure the inspection of the Crown Office and Procurator Fiscal Service and to submit to you, the Lord Advocate, a report on any particular matter connected with the operation of the Crown Office and Procurator Fiscal Service which you refer to me.

Since the publication of my last annual report the past 12 months have produced cases and issues of considerable importance to the prosecution service in Scotland. I highlighted in my last report the Supreme Court's decision in the Cadder case and since then the decisions have been issued in the so called 'sons of Cadder' case. These cases had been referred by you the Lord Advocate to the Supreme Court.

In November 2011 Lord Carloway published his report following the decision in the Cadder case and the Scottish Government has launched a consultation paper seeking views on all aspects of his report including possible abolition of the corroboration rule. I intend to make a contribution to this important exercise.

During the course of the year the Double Jeopardy (Scotland) Act 2011 came into force. The Inspectorate of Prosecution came into existence as a result of the first recommendation of the Jandoo Report into the Chhokar case (in 2001) and following the introduction of the Double Jeopardy (Scotland) Act 2011 you instructed the police to carry out further enquiries into the murder as the first case to be reviewed under the new rules and to be handled by the Cold Case Unit part of the Crown Office's Serious and Organised Crime Division.

The year 2011/12 saw the publication of two major thematic reports. The first of these was on knife crime. Knife crime had and has dominated the headlines in Scotland for many years and our report made six recommendations followed by policy change announced by you shortly thereafter.

In addition the second of a series of reports on how victims are dealt with in the criminal justice system in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland) was published. This second report dealt with cases which had been taken up in the summary courts either in the Sheriff Court or in the Justice of the Peace Court. Such cases impacted on the greatest number of victims in the criminal justice system where cases were taken to court and 12 recommendations were made as aids to improvement.

Both reports are examined in more detail in the annexes attached hereto.


During 2012 the biggest change to the way cases are dealt with by the Crown Office and Procurator Fiscal Service has been introduced from 2 April 2012. This has meant a move away from work being dealt with locally to the creation of three new Federations. Staff in these Federations now being responsible for discrete areas of work rather than for a geographical area. This change coincided with the biggest change to policing in Scotland by the creation of a single police force (to be effective from 2013). Efficiency savings are expected as a result with greater expertise with work moving rather than people moving. This change had not had time to bed in at the time of this annual report. This will provide both opportunities and challenges for Crown Office and Procurator Fiscal Service and the Inspectorate.

I mentioned in last year's report that following the Crerar Review efforts had been made in conjunction with colleagues in Crown Office and Procurator Fiscal Service to create an in-house self assessment model. The in-house model was suspended during the course of this year pending a review following the creation of the Federations. One of the long standing policies on inspection is to encourage self assessment by organisations and I anticipate close collaboration with Crown Office and Procurator Fiscal Service in developing a new model of self assessment compatible with the Federation structure. This is dealt with in the report in more detail.

The budget, as indicated last year, has now been reduced to £320,000. I am pleased to report, however, that again for the year 2011/12 we were within this reduced budget. I have developed a staffing strategy and programme to ensure we continue to maximise the value for money of our resources.

Joint working in the criminal justice system continues to be a hallmark with much greater co-operation between the key players including the Crown Office and Procurator Fiscal Service, the police and Scottish Court Service and others.

As before I take the view that inspection while delivering on quality assurance (where appropriate) and accountability also acts as a catalyst for improvement and recommendations are focused on what we consider to be practicable and achievable.

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  
HM Chief Inspector  
October 2012

## **1. STAFF AND ACCOMMODATION**

The staff of the Inspectorate during the period of this report consisted of the Chief Inspector, two Senior Depute Legal Inspectors, a Management Inspector and a Personal Assistant.

The number of staff is modest (equivalent to 3.6 full-time) but is bolstered by the recruitment of additional ad hoc inspectors to carry out specific tasks particularly in relation to the examination of casework.

For additional inspector assistance the Inspectorate is moving towards a recruitment process based on fixed term contracts. This adds enormously to the flexibility of the staffing arrangements and is a highly cost effective and efficient method of delivering the work programme.

## **2. LORD ADVOCATE'S ADVISORY GROUP**

The Lord Advocate's Advisory Group (established in 2006) consists of a number of ex officio members, invited members and two lay members recruited by public advertisement.

Its primary function as ever is to provide advice on the work programme of the Inspectorate and to keep under review the working relationship between the Inspectorate and the Crown Office and Procurator Fiscal Service.

The Group continues to meet every four months under the Chairmanship of the Lord Advocate's Legal Secretary.

During the course of the year I am delighted to report that following the retirement of Mr James Hamilton the Director of Public Prosecutions for the Republic of Ireland an invitation was extended to his successor, Claire Loftus, who accepted the invitation. Having the Directors of two external prosecution systems provides a useful external perspective for the Inspectorate, its work and its manner of operation.

The Inspectorate takes a risk based approach to the selection of topics for inspection and having two external lay members on the group also greatly assists in having some input into the choice of topics.

### **3. INSPECTION REFORM AND THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010**

The bringing into force of the Public Services Reform (Scotland) Act 2010 continues to have an impact on the Inspectorate. Similarly the Crerar Review continues to play a prominent role in the development of the work programme etc.

In accordance with the principles of the Act the Inspectorate continues to take a 'user' perspective when producing reports including contact with victims in the production of the report on victims.

Opportunities are taken, wherever possible, to co-operate with other Inspectorates.

On the efficiency, effectiveness and economy front the work programme continues to be risk based and proportionate. The move away from Area reports has been accelerated towards more targeted thematic reports and effectiveness was enhanced by continuing to do joint work with other bodies.

IT, HR and other services continue to be supplied by the Scottish Government.

The creation of a single police force for Scotland in 2013 led to a renewed statutory basis for Her Majesty's Inspectorate of Constabulary (Scotland) with new functions related to the creation of the single police service and the Authority.

As indicated in the Foreword the Crown Office and Procurator Fiscal Service in-house case review was suspended during the year pending a new system compatible with the Federation structure. This leaves the Inspectorate as the sole monitoring system on the quality of the work. Some of our findings in our most recently published work were also mirrored in the internal case review and it is important from the point of view of self improvement that a new system is up and running as soon as possible. We will work closely with Crown Office and Procurator Fiscal Service staff to advise on and monitor such new system. Compliance with the previous system we found to be very patchy.

#### **4. EQUALITIES ACT**

The Inspectorate came into being as a result of an equality issue and it is appropriate therefore that the Equalities Act remains as a focus for inspection work.

As outlined in last year's report the Equality and Human Rights Commission published in September 2011 its report into disability related harassment. The overarching conclusion of the inquiry was that cases of disability related harassment which come to court and receive media attention are only the tip of an iceberg. The findings of the inquiry will be borne in mind when the joint thematic on sexual offences is conducted with Her Majesty's Inspectorate of Constabulary (Scotland).

The Inspectorate continues to maintain close links with Crown Office and other equality diversity groups including the Crown Office Equality Advisory Group and the more general Working Group on Interpreting and Translation.

#### **5. COMPLETED WORK**

This report covers the period of one year to the end of May 2012.

During this period a further two thematic reports were completed and published.

The first of these was the report on knife crime. This is detailed in Annex A.

The second was the publication in conjunction with Her Majesty's Inspectorate of Constabulary (Scotland) of a report on the treatment of victims in the criminal justice system. This is detailed in Annex B.

#### **6. CURRENT AND FUTURE WORK PROGRAMME**

The future work programme continues to be influenced by the Crerar Review and by the operation of the Public Services Reform (Scotland) Act.

The creation of the new Federation structure as referred to above and the change from a largely locally delivered prosecution service to a much wider federal structure has inevitably accelerated the move away from areas or office inspections towards more targeted thematic reports.

Discussions with Her Majesty's Inspectorate of Constabulary (Scotland) continue in relation to preparing a joint thematic on sexual offences and other solemn work.

In the meantime the Inspectorate is publishing a report on the Crown's preparation of summary cases in Scotland and on the operation of the Health and Safety Division.

The operation of the new federal structure is inevitably a prime topic for future inspection but needs time to bed in.

## 7. FREEDOM OF INFORMATION

The Inspectorate had its own publication scheme for freedom of information issues which was approved by the Information Commissioner in January 2009. This expired in May 2011 and has now been replaced by the Commissioner's own standard publication scheme. Information on this is available on our public website. During the year to the end of May 2012 14 Freedom of Information requests were made under the act for information and these were all dealt with within the appropriate statutory time limit.

At the time of writing a Freedom of Information (Amendment) (Scotland) Bill is proceeding through the Scottish Parliament and its progress will be closely monitored.

Allied to that during the course of the year the Public Records (Scotland) Act 2011 came into being and the Inspectorate is preparing its own plans to comply with the new requirements.

## 8. BUDGET

The Inspectorate's budget for 2011-12 was £320,000 (reduced from £350,000).

The expenditure was as follows.

Staff salaries	240,407
Admin expenses	46,551
<b>Total</b>	<b><u>£286,958</u></b>

In terms of the Public Services Reform (Scotland) Act 2010 there are duties now to publish certain information. These are to provide information in connection with the following matters:

- Public relations
- Overseas travel
- Hospitality and entertainment
- External consultancy

No expenditure was incurred in respect of any of these heads.

The budget continues to be under the control of the Minister for Parliamentary Business.

ANNEX A

# KNIFE CRIME THEMATIC

(published 7 July 2011)

Knife crime in Scotland had long been a cause for concern dating from the razor gangs of the 1950s (and earlier) through to the present day.

Knife crime has dominated headlines for some time with calls for mandatory minimum sentences for those caught carrying knives.

In 2006 in recognition of the seriousness of knife crime the then Lord Advocate asked for a review of prosecution policy and revised guidelines were issued to the Procurator Fiscal Service in 2006.

There were three aspects to this new guidance:

- Those caught by the police were to be reported as custodies pending their appearance in court
- Bail would be opposed for those with relevant previous convictions
- Proceedings would be on indictment for those previously sentenced to imprisonment for possession of a knife. There was to be a presumption in favour of proceeding on indictment for possession of a knife where there was a similar previous conviction (whether or not this had been followed by a jail sentence).

The Scottish Parliament at the same time passed legislation doubling the penalties for possession of knives.

Some five years on from this policy and with knife crime very much in the public domain it was felt the time was right to examine knife crime prosecution. This was in line with a risk based method of selection of topics for inspection.

The Inspectorate takes an evidence based approach and 440 individual cases were examined in some detail (between 1 April 2009 and 31 March 2010). In addition extensive interviews were conducted with COPFS staff, criminal justice partners and sheriffs.

Our overarching conclusion was that there was very high compliance (by COPFS) with the policy laid down by the Lord Advocate. We did take issue with decisions not to proceed in 1.5% of cases and we disagreed with the choice of forum (or court) in 4% of cases, these latter were, however, still prosecuted.

We made six recommendations in total designed as an aid to improvement including ensuring that the Case Marking Guidance (in-house instructions to Fiscals) was checked against the general guidance and that there was regular monitoring of compliance with the provisions of the knife crime guidance.

The Lord Advocate welcomed the report and accepted the findings. It was followed two weeks later by an announcement by the Lord Advocate of a further strengthening of knife crime policy including new policies in relation to possession of knives on licensed premises, public transport and bus or train stations and new bail opposition provisions.

## ANNEX B

# VICTIMS IN THE CRIMINAL JUSTICE SYSTEM PHASE II

## (published 11 November 2011)

This was the second joint inspection by the Inspectorate of Prosecution in Scotland and Her Majesty's Inspectorate of Constabulary for Scotland into how victims were treated in the criminal justice system. The first joint report covering cases where no court proceedings had been taken was published in October 2010.

This second report dealt with cases which had been taken in the summary courts either in the Sheriff Court or the Justice of the Peace Court.

The inspection was set against the background of the Scottish Government's Strategy for Victims published in 2001. The strategy itself had been developed in response to developments throughout Scotland, Europe and internationally including the United Nations declaration of basic principles of justice for victims of crime and abuse of power. The 2001 strategy had been strengthened by the development of national standards for victims of crime launched by the then Scottish Executive in 2005.

Being a joint report the findings related both to the police service and to the Crown Office and Procurator Fiscal Service.

In relation to COPFS we found evidence of strong leadership both at ministerial level from the present (and former) Lord Advocates and also at official level.

We had recommended in our first report that consolidation should take place in relation to COPFS' commitments to victims (and witnesses) of crime and we found that this had in fact taken place by the production of two public facing documents. We did find some overlap and possible confusion in the information available and therefore recommended that the COPFS consolidated the material available and removed older irrelevant material.

During the inspection we examined what victims were given by way of information.

One of our main findings was that the current policy meant that only those victims who were referred to the COPFS Victim and Information Service (VIA) would receive ongoing information about the progress of their case. While we found evidence of satisfaction with the service provided by VIA the number

of summary cases referred to them was very small (primarily domestic abuse cases).

All other victims of summary crime were required to really seek information themselves by contacting COPFS and that many victims were unaware of this need to 'opt in' to the system and we felt this fell short of the commitments to victims within the Scottish strategy.

We looked at particular aspects of victim information and found that where a case was adjourned (for whatever reason) and witnesses countermanded that the countermand notice did not explain fully what this in practice meant and we therefore recommended that a sentence be added to the countermand notice advising the witnesses that they would (or not) be required to attend in the future.

We carried out a telephone survey of victims in Scotland in consultation with bodies such as Victim Support Scotland and found that a significant number of respondents stated they were not satisfied with how well they were kept informed of the case by COPFS.

Although we did find examples of some good practice (such as in Dumfries and Galloway) we recommended nevertheless that COPFS ensured that it proactively provided all victims with information they needed when they needed it.

In relation to VIA since our first report had been published another category of victim/witness had been introduced to be covered by the VIA service. While we welcomed the addition of this category and the potential widening of the coverage by VIA we noted that the COPFS IT system had not been adapted to include this category thus we felt undermining its effectiveness. We asked that this be addressed in one of our suggestions thus improving the monitoring of referrals.

On the question of identifying and reporting on a victim's vulnerability (essential for future action) we explored the roles and responsibilities of both the police and COPFS and examined training provided to police officers at the Scottish Police College which we found to be extensive for probationary constables but requiring some improvement for first and second line managers. We noted guidance issued to COPFS staff on their roles and responsibilities in this area.

During the fieldwork we conducted it emerged that the police were good at identifying and reporting on obvious vulnerability categories such as disability but identification of more hidden vulnerability such as mental health problems was more challenging.

COPFS staff had reported that the lack of information on vulnerability could have a negative impact on any resulting criminal justice process and that it was key to identifying whether special measures would be needed in court.

We looked at the experience of victims when they were required to attend at court. In practice only a very small number of victims actually had the opportunity to give evidence in summary cases.

This was reflected in the fact that we had difficulty in obtaining sufficient data on victim participation at this stage during our audit and telephone survey. We explored the continuing problem of trials being adjourned or 'churned' and noted various initiatives led by the Scottish Government and involving the Association of Chief Police Officers in Scotland (ACPOS) and COPFS to improve witness attendance at court.

We did note, however, that COPFS currently had no statistics relating to witness attendance at court and consequently we recommended that COPFS should consider ways to improve its IT system to allow for analysis of victim/witness attendance at court.

We also looked at how victims were treated after the court proceedings whether there had been a trial or not including the payment of expenses and return of productions.

In relation to expenses we found a high level of customer satisfaction.

However in relation to information on the disposal of the case our telephone survey of victims found that many were dissatisfied with not being told the final outcome of their case by COPFS. We felt that this was a missed opportunity and recommended that COPFS should proactively inform victims of the outcome.

Finally we examined procedures around the return of property belonging to victims/witnesses which had been taken as part of the case (known as productions).

Our own surveys did not reveal any great concern by victims but we were made aware of issues between COPFS and police forces relating to returning property.

While the COPFS policy was clear we did find significant variation in practice which had a negative impact on both police forces and property owners and consequently in recommendation 12 we recommended that police forces and COPFS developed and implemented an agreement between them which detailed clear procedures that would ensure the efficient return of property to victims and owners after the conclusion of the case.

Our overarching conclusion related to the provision of information to victims on the progress of their case. This was an issue which arose consistently throughout the inspection and was strongly evidenced both in consultation with external organisations and in the telephone survey of victims which we carried out. We noted that the Scottish strategy for victims placed the onus on agencies to proactively provide victims with updates and that both the police and COPFS had made a commitment to comply with this.

We felt that the current policy of COPFS on how it provided information to victims fell some way short of the requirements of the strategy to which it was committed and was reflected in the responses from victims consulted during the survey.

As a consequence the principal finding of the report was that police forces and COPFS should set and deliver clear service standards for the proactive updating of victims as to the progress of their case including the outcome thereof.





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[www.scotland.gov.uk](http://www.scotland.gov.uk)

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